CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 240.

WINTHROP ASTOR CHANLER, THOMAS T. SHERMAN, AS COMMITTEE FOR JOHN ARMSTRONG CHANLER, ET AL., PLAINTIFFS IN ERROR,

vs.

OTTO KELSEY, COMPTROLLER OF THE STATE OF NEW YORK.

IN ERROR TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK AND STATE OF NEW YORK.

FILED MARCH 28, 1906.

(20,152.)

(20,152.)

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Court of Appeals.

NEW YORK, ss:

he Court of Appeals, held at the Capitol, in the city of
on the 12th day of December, in the year of our Lord
usand nine hundred and five, before the Judges of said

the Hon. Edgar M. Cullen, Chief Judge, presiding.

W. H. SHANKLAND, *Clerk.*

tur Dec. 13th, 1905.

the Matter of the Appraisal, under the Act in Relation to
Taxable Transfers of Property, of the Property of LAURA
ASTOR DELANO, Deceased.

membered, that on the 22d day of July, in the year of our
thousand nine hundred and five, John Hubert de Stuers
rs, the appellants in this proceeding, came here into the
ppeals, by Roosevelt & Kobbe and others, their attorneys,
in the said Court a Notice of Appeal and return thereto
order of the Appellate Division of the Supreme Court in
e First Judicial Department. And the Comptroller of the
New York, the respondent in said proceedings, after-
eared in said Court of Appeals by Edward H. Fallows, his

said Notice of Appeal and the return thereto filed as afore-
d, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this
se argued by Mr. Lucius H. Beers, of counsel for the ap-
nd it having been submitted by counsel for the respondent,
due deliberation had thereon, did order and adjudge that
of the Appellate Division of the Supreme Court appealed
in be, and the same hereby is affirmed, with costs.

was also further ordered, that the record aforesaid, and the
gs in this Court, be remitted to the Surrogate's Court of
y of New York, there to be proceeded upon according to
v.

Therefore, it is considered that the said order be affirmed,
h costs, as aforesaid.

ereupon, as well the Notice of Appeal and return thereto
as the judgment of the Court of Appeals aforesaid, by them
the premises, are by the said Court of Appeals remitted
Surrogate's Court of the County of New York before the
s thereof, according to the form of the statute in such case
l provided, to be enforced according to law, and which

record now remains in the said Surrogate's Court before the Surrogates thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE.
ALBANY, *Dec. 13th*, 1905.

I Hereby Certify that the preceding record contains a correct transcript of the proceedings in the Court of Appeals, with the papers originally filed therein attached thereto.

[Seal State of New York Court of Appeals.]

W. H. SHANKLAND, *Clerk.*

e Filed Jul- 22, 1905.

Court of Appeals.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

Papers on Appeal from Order Fixing Tax.

Edward H. Fallows, Attorney for Respondent, 170 Broadway, New York City.
Lucius H. Beers, Counsel for Appellants, 49 Wall Street, New York City.

1 Court of Appeals.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

Statement.

This proceeding was commenced by the filing of a petition by Franklin B. Lord, one of the executors of Laura Astor Delano, deceased, for the appointment of an appraiser herein on the 18th day of November, 1902.

The original parties to this proceeding were John Jacob Astor, Franklin B. Lord and Warren Delano, Jr., executors of Laura Astor Delano, deceased, John Hubert de Stuers, Margaret de Stuers Oberndorff (formerly Margaret de Stuers), Hubert de Stuers, John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, The Union Trust Company, as trustee for said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret

Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet and their children and Arthur Astor Carey.

2 A hearing was had before the appraiser herein, at which Franklin B. Lord, Edmund L. Baylies and the New York Life Insurance and Trust Company as trustees, Franklin B. Lord and Lucius H. Beers and Robert William Gillespie-Stainton as trustees and Franklin B. Lord and Lucius H. Beers as trustees appeared in addition to the foregoing, and the appraiser filed his report on December 9, 1903, upon which report the order of December 11, 1903, herein was entered.

The infants Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman became parties to this proceeding by the appointment of Egerton L. Winthrop, Esq., as their special guardian herein, on or about February 17, 1904. The infants Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Jr., and Hester Alida Emmet became parties to the proceeding by the appointment of Grenville T. Emmet, Esq., as their special guardian by an order herein dated February 2, 1904. The infants Dorothy Chanler, Lewis Stuyvesant Chanler, Jr., Alida Chanler and William Astor Chanler, 2nd, became parties hereto by the appointment of Bronson Winthrop, Esq., as their special guardian herein by order entered on or about February 17, 1904.

All the above named parties appealed to the Surrogate from said order of December 11, 1903. That order was affirmed by an order entered March 22, 1905. All the above named parties then appealed to the Appellate Division of the Supreme Court, First Department, which Court affirmed the said order of the Surrogate's Court entered March 22, 1905. There has been no change in parties in this proceeding except as above stated.

3 *Notice of Appeal to Appellate Division.*

Surrogates' Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

GENTLEMEN: Please take notice that John Hubert de Stuers, Margaret de Stuers Oberndorff (formerly Margaret de Stuers), Hubert de Stuers, John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and the Union Trust Company as Trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and their children, Arthur Astor Carey, and the infants, Laura Astor Chanler, Beatrice Margaret Mary Chanler,

Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by Egerton L. Winthrop, Jr., their special guardian; the infants Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Junior, and Hester Alida Emmet, by Grenville T. Emmet, their special
4 guardian; the infants Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, Second, by Bronson Winthrop, their special guardian, persons interested in the property appointed by Laura A. Delano in her last Will and Testament, under and by virtue of certain powers of appointment, created as follows:

(1.) A power of appointment created by William B. Astor, by deed dated September 30, 1848.

(2.) A power of appointment created by William B. Astor, by deed dated September 10, 1844.

(3.) A power of appointment created by William B. Astor, by deed dated October 28, 1865.

(4.) A power of appointment created by William B. Astor, by deed dated September 6, 1849.

hereby appeal to the Appel-ate Division of the Supreme Court of the State of New York, in and for the First Judicial Department from an order of Hon. Frank T. Fitzgerald, one of the Surrogates of the County of New York, made and entered herein on the 22nd day of March, 1905, affirming the order theretofore made and entered herein on the 11th day of December, 1903, fixing a tax upon the estate of the said decedent under the act relating to taxable transfers, on the following grounds, to wit:

(1.) That Chapter 284 of the Laws of 1897 does not apply to the property so appointed to these appellants for the reason that said property was acquired by them under deeds made in the years 1844, 1848, 1849 and 1865.

(2.) That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interest of the ap-
5 pellants herein, is unconstitutional and void, and that it is repugnant to Section 10, Article I of the Constitution of the United States, in that it impairs the obligation of contracts between William B. Astor and the appellants herein.

(3.) That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appellants, is unconstitutional and void as being repugnant to Section I of the XIV Amendment of the Constitution of the United States in that it seeks to deprive citizens of property without due process of law, and to deny to persons affected thereby the equal protection of the laws.

(4.) That such portions of the property transferred by said deeds of 1844, 1848, 1849 and 1865 as were, under the terms of any of said deeds granted to any of the said appellants on failure of appointment by said Laura A. Delano are not subject to any tax herein.

(5.) That if the property appointed to, or in trust for, any of the

appellants herein under the terms of said deeds of 1844, 1848, 1849 and 1865, is held to be subject to a tax herein, such tax should be fixed with respect to the relationship of the appellants herein to William B. Astor and not with respect to their relationship to the said Laura Astor Delano.

Dated New York, March 29, 1905.

ROOSEVELT & KOBBE,
Attorneys for Arthur Astor Carey,
44 *Wall Street, New York City.*

MORRIS, SENTELL & MAIN,
Attorneys for Winthrop Astor Chanler, Elizabeth Winthrop
6 *Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet,* 16 *Exchange Place, New York City.*

EVARTS, TRACY & SHERMAN,
Attorneys for Thos. T. Sherman, as Committee for John Armstrong Chanler, 52 *Wall Street, New York City.*

HOWARD MANSFIELD,
Attorney for John Hubert de Stuers, Margaret de Stuers, Oberndorff and Hubert de Stuers, 49 *Wall Street, New York City.*

PECKHAM, MILLER & KING,
Attorneys for The Union Trust Company, as Trustee, 80 *Broadway, New York City.*

EGERTON L. WINTHROP, JR.,
Special Guardian for the Infants Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, 48 *Wall Street, New York City.*

GRENVILLE T. EMMET,
Special Guardian for the Infants Elizabeth Winthrop Emmet,
7 *Mary Chanler Emmet, Christopher Temple Emmet, Jr., and Hester Alida Emmet,* 52 *Wall Street, New York City.*

BRONSON WINTHROP,
Special Guardian for the Infants Dorothy Chanler, Lewis Stuyvesant Chanler, Jr., Alida Chanler and William Astor Chanler, Second, 32 *Liberty Street, New York City.*

To James A. Donnelly, Esq., Clerk of the Surrogates' Court, New York County.

Edward H. Fallows, Esq., Attorney for Comptroller of the State of New York.

Henry de Forest Baldwin, Esq., Attorney for Executors of Laura A. Delano.

8 *Petition for Appointment of Appraiser Read by Respondent.*

Surrogates' Court, County of New York.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

To the Surrogates of the County of New York:

The petition of Franklin B. Lord respectfully shows:

First: That your petitioner is one of the Executors of the last Will and Testament of Laura Astor Delano, deceased, and as such is a person interested in the property transferred by her last Will and Testament.

Second: That said decedent departed this life on the 15th day of June, 1902, at Geneva, in the Republic of Switzerland.

Third: That Letters Testamentary on the estate of said deceased were, on the 14th day of October, 1902, issued to your petitioner in conjunction with John Jacob Astor and Warren Delano, Jr., the Executors named in the Will, by the Surrogates' Court of the County of New York.

Fourth: That, as your petitioner is informed and believes a portion of the property of said decedent transferred by said last
9 Will and Testament or the property appointed thereby, by virtue of certain powers of appointment in said decedent vested, is or may be subject to the payment of the tax imposed by law in relation to taxable transfers of property.

Fifth: That all persons who are interest- in said estate and who are entitled to notice to all proceedings herein, and their post office addresses, are to the best of your petitioner's information, knowledge and belief as follows:

Nathan L. Miller, Comptroller of the State of New York, State House, Albany, New York.

Franklin B. Lord, No. 49 Wall Street, Manhattan, New York.

John Jacob Astor, No. 23 W. 26th Street, Manhattan, New York.

Warren Delano Jr., No. 1 Broadway, Manhattan, New York.

John Hubert de Stuers, Margaret de Stuers, Hubert de Stuers, c/o Lord, Day & Lord, No. 49 Wall St., Manhattan, New York City.

John Armstrong Chanler, c/o Thomas T. Sherman, No. 52 Wall St., Manhattan, New York City.

Thomas T. Sherman, as Committee of the property of said John Armstrong Chanler, No. 52 Wall Street, N. Y.

Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, Laura A. Chanler, c/o Henry L. Morris, 16 Exchange Place, Manhattan, New York.

10 Sixth: That petitioner is informed and believes that all of the above named persons are of full age and sound mind, except Laura A. Chanler who is under the age of twenty-one years,

and John Armstrong Chanler, who has been judicially declared incompetent to manage his affairs and Thomas T. Sherman has, by the Supreme Court of this State, been appointed the Committee of his property.

Wherefore your petitioner prays that you will determine whether or not any of the property transferred or appointed by the last Will and Testament of Laura A. Delano, deceased, is subject to the tax imposed by law in relation to taxable transfers.

Dated New York, November 14, 1902.

FRANKLIN B. LORD, *Petitioner.*

STATE OF NEW YORK, *County of New York, ss:*

Franklin B. Lord, being duly sworn, says:

That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

FRANKLIN B. LORD.

Sworn to before me this 17th day of November, 1902.

MORRIS U. ELY,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

11 *Affidavit of Coleman E. Kissam, Read by Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

COUNTY OF NEW YORK, *ss:*

Coleman E. Kissam, being duly sworn, says:

That he has charge of the above entitled proceeding in the office of Lucius H. Beers, attorney for the petitioner herein, Franklin B. Lord. That through inadvertence the name of Arthur Astor Carey was omitted among the parties interested in said estate and who are entitled to notice of all proceedings therein.

That deponent asks that his name be included among those persons so interested and that notice of all proceedings be sent him at his post office address as follows: Arthur Astor Carey, care Roosevelt & Kobbe, 44 Wall Street, New York.

COLEMAN E. KISSAM.

Sworn to before me this 18th day of November, 1902.

ELI G. PARTRIDGE,
Notary Public, New York County.

12 *Order Appointing Appraiser, Read by Respondent.*

At a Surrogate's Court held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 18th day of November, 1902.

Present: Hon. Frank T. Fitzgerald, Surrogate.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

On reading and filing the petition of Franklin B. Lord, one of the Executors of the last Will and Testament of Laura Astor Delano, deceased, I do hereby, pursuant to the requirements of Chapter 658 of the Laws of 1900, direct that Robert Mazet, Esq., one of the appraisers appointed by the State Comptroller under said statute, to fix the fair market value of so much of the property transferred and appointed by the last Will and Testament of Laura Astor Delano, deceased, which is subject to the payment of the tax imposed by the laws in relation to taxable transfers of property.

FRANK T. FITZGERALD, *Surrogate.*

13 *Notice of Hearing, Read by Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

You will please to take notice that, by virtue of an order of Hon. Frank T. Fitzgerald, one of the Surrogates of the County of New York, made and dated the 18th day of November, 1902, and pursuant to provisions of Chapter 908 of the Laws of 1896, relating to taxable transfers of property, and the acts amendatory thereof, I shall on the 26th day of November, 1902, at 3 o'clock in the afternoon of that day, at room No. 1404, Home Life Building, Nos. 256 and 257 Broadway, in the Borough of Manhattan, City of New York, proceed to appraise at its fair market value all the property of said Laura Astor Delano, deceased, late of the said city, passing by her last Will and Testament or by the Intestate Laws of the State of New York, which is subject to the payment of the tax imposed by the said Act and the Acts amendatory thereof.

And of such of you as are hereby notified as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or, if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

New York, November 19, 1902.

ROBERT MAZET, *Appraiser.*

14 *Report of Appraiser, Read by Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

To the Surrogates' Court of the County of New York:

I, Robert Mazet, who was, by an order of Honorable Frank T. Fitzgerald, one of the Surrogates of New York County, made and entered on November 13th, 1902 (certified copy of which order is hereto annexed), directed to act as appraiser pursuant to Chapter 908 of the Laws of 1896, and the Acts amendatory thereof and supplemental thereto, do respectfully report:

FIRST. Having filed my oath of office in the State Comptroller's office pursuant to Chapter 173 of the Laws of 1901, I gave notice by mail, postage prepaid, to all persons known to have or claim an interest in all property subject to the tax imposed by said law, to wit:—to the following persons, being those named in the petition for said order, of the time and place at which I would appraise the property of Laura Astor Delano, deceased, subject to the payment of said tax; a true copy of said notice is also hereto attached:

Hon. Edward H. Fallows,
Lucius H. Beers, Esq.,
Franklin B. Lord,
John Jacob Astor,
Warren Delano, Jr.,
John Hubert de Stuers,
15 Margaret de Stuers,
Hubert de Stuers,
John Armstrong Chanler,
Thomas T. Sherman (as committee of the property of John Armstrong Chanler),
Winthrop Astor Chanler,
Elizabeth Winthrop Chapman,
William Astor Chanler,
Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler,
Alida Beekman Emmet,
Laura A. Chanler,
Arthur Astor Carey.

SECOND: I further report that at the time and place in said notice stated, to wit:—on November 26th, 1902, at 3 o'clock in the afternoon, at Room 1404, Home Life Building, 256 Broadway, Borough of Manhattan, City of New York, and at other and subsequent times and at divers places, I appraised the estate of Laura Astor Delano, deceased, together with all property appointed by the last will and testament and codicil of Laura Astor Delano, deceased, subject to

tax herein, at its fair market value on June 15th, 1902, the date of her death, as follows:

Real Property.

1. Individual estate of Laura Astor Delano within the State of New York at the time of her death:

341 Fifth Avenue, lot and building.....	$135,000.00	
343 " "	135,000.00	
345 " "	140,000.00	
347 " "	140,000.00	
67 Third Avenue, "	30,000.00	
		$580,000.00
16 Brought forward.....		$580,000.00

2. Property devised by tenth article of the will of John Jacob Astor to William B. Astor for life, with power to appoint, and by the fifth article of the will of William B. Astor devised to Laura Astor Delano, with power to appoint:

268 Sixth Avenue		
270 "		
272 "		
274 "	$425,000.00	
276 "		
61 West 17th St., lot and building.....		
55 W. 17th St., lot and bldg.....	50,000.00	
57 " "	50,000.00	
59 W. 17th St., lot and bldg.....	50,000.00	
308 W. 15th St., "	13,000.00	
310 " "	13,000.00	
		$601,000.00

3. Property devised by the second clause of the fifth codicil of the will of William B. Astor to Laura Astor Delano for life with power to appoint:

190 Madison Ave., lot and bldg.....	$150,000.00	
15 East 34th St., " " stable.....	80,000.00	
		230,000.00

4. Property belonging to trust estate created by fifth clause of the will of William B. Astor, with power to appoint:

382 Broadway, lot and bldg.....	$225,000.00	
331 W. 14th St., "	18,000.00	
		243,000.00
Carried forward.....		$1,654,000.00

17	Brought forward		$1,654,000.00
	5. Property conveyed by William B. Astor and his wife to Laura Astor Delano for life, with power of appointment, by deed dated September 30, 1848:		
45	Lafayette Place, lot and bldg.....		50,000.00
	6. Real property conveyed by William B. Astor and his wife to Laura Astor Delano for life, with power of appointment, by deed dated September 10, 1844, said lands being known as the Cozine Farm:		
	Block 1045.		
911	Eighth Avenue		
303	W. 54th St.,	subject to lease...	$55,000.00
913	Eighth Avenue		
915	"		
919	"	" ...	60,000.00
305	W. 54th St.,		
921	Eighth Avenue		
923	"	" ...	45,000.00
925	"		
927	"	" ...	60,000.00
302	W. 55th St.,		
307	W. 54th St.,	" ...	11,000.00
304	W. 55th St.,	" ...	8,000.00
306	"	" ...	8,000.00
308	"	" ...	8,000.00
310	"	" ...	8,000.00
312	"	" ...	8,000.00
314	"	" ...	8,000.00
316	"	" ...	8,000.00
318	"	" ...	8,000.00
320	"	" ...	8,000.00
322	"	" ...	8,000.00
324	"	" ...	8,000.00
	Carried forward		$319,000.00 $1,704,000.00
18	Brought forward		$319,000.00 $1,704,000
326	W. 55th St., subject to lease.....		8,000.00
328	"	"	8,000.00
330	"	"	9,500.00
332	"	"	9,500.00
334	"	"	9,500.00
336	"	"	9,500.00
338	"	"	9,500.00
340	"	"	9,500.00
342	"	"	9,500.00
344	"	"	9,500.00

346	W. 55th St., subject to lease.....		$9,500.00	
348	" "		9,500.00	
350	" "		9,500.00	
352	" "		9,500.00	
354	" "		9,500.00	
356	" "		9,500.00	
358	" "		9,500.00	
360	" "		9,500.00	
362	" "		9,500.00	
364	" "		9,500.00	
366	" "		9,500.00	
368	" "		6,500.00	
370	" "		6,500.00	
372	" "		6,500.00	
321	W. 54th St.,			
323	"			
325	"	12 vacant lots,		
327	"	$120,000.		
337 adj.	"			
339/351	"			
Less for gores appraised hereafter, $13,200, $7,400.....		20,600.		
			99,400.00	
830	Ninth Ave., subject to lease.....		12,000.00	
832	" "		12,000.00	
834	" "		5,000.00	
836	" "		5,000.00	
838	" "		5,000.00	
840	" "		7,000.00	
	Carried forward.....		$680,400.00	$1,704,000.00
19	Brought forward..		$680,400.00	$1,704,000.00
	Block 1046.			
329	W. 55th St., subject to lease.....		8,000.00	
331	" "		8,000.00	
333	" "		8,000.00	
347	" "		9,500.00	
349	" "		9,500.00	
351	" "		9,500.00	
353	" "		9,500.00	
355	" "		9,500.00	
357	" "		9,500.00	
359	" "		9,500.00	
361	" "		9,500.00	
363	" "		9,500.00	
365	" "		9,500.00	

842, 844, 846, 848, 850, 371, 373, 375	Ninth Ave. plot, subject to lease. West 55th St.	.....	50,000.00
	Block 1064.		
831	Ninth Ave., subject to lease.....		7,500.00
833	" "		7,500.00
835	" "		7,500.00
837	" "		7,500.00
839	" "		9,500.00
402	W. 55th St., "		7,500.00
404	" "		8,500.00
406	" "		8,500.00
408	" "		4,500.00
410	" "		4,500.00
412	" "		6,000.00
414	" "		6,000.00
416	" "		5,500.00
418	" "		5,400.00
420	" "		5,200.00
430-442	" plot 6½ lots, vacant.....		45,500.00
	Carried forward.....		$996,000.00 $1,704,000.00
20	Brought forward		$996,000.00 $1,704,000.00
452	W. 55th St., subject to lease.....		7,000.00
454	" "		7,000.00
456	" "		7,000.00
828	Tenth Ave., with old bldg.....		7,000.00
	Block 1065.		
841	Ninth Ave., subject to lease.....		9,000.00
843	" "		7,000.00
845	" "		7,000.00
849, 851	" "		25,000.00
403	W. 55th St., "		4,000.00
405	" "		3,800.00
407	" "		6,000.00
409	" vacant lot		6,000.00
411	" "		10,500.00
413	" "		7,650.00
415	" "		7,650.00
417	" "		7,500.00
419	" "		7,500.00
421	" "		7,000.00

421a	W. 55th St., vacant lot	$500.00	
423	" "	7,000.00	
423a	" "	525.00	
425	" "	7,000.00	
425a	" "	550.00	
427	" "	7,000.00	
427a	" "	575.00	
429	" "	7,000.00	
431	" "	7,000.00	
433	" "	7,000.00	
435	" "	7,000.00	
437	" "	7,000.00	
439	" "	7,000.00	
441	" "	7,000.00	
443	" "	7,000.00	
445	" "	7,000.00	
447	" "	7,000.00	
449	" "	7,000.00	
451	" "	7,000.00	
453	" "	7,000.00	
	Carried forward	$1,253,750.00	$1,704,000.00
21	Brought forward	$1,253,750.00	$1,704,000.00
834–840	Tenth Ave., with old bldgs	45,000.00	
842–848	Plot, Tenth Ave., with old buildings	30,000.00	
434	W. 56th St., with old bldg	7,000.00	
436	" vacant lot	7,000.00	
438	" "	7,000.00	
440	" with old bldg	7,000.00	
446	" vacant lot	5,000.00	
450	" "	7,000.00	
	Block 1084.		
831	Tenth Ave., subject to lease	12,000.00	
833	" "	8,500.00	
835	" "	8,500.00	
837	" "	8,500.00	
839	" "	8,500.00	
841	" "	8,500.00	
843	" "	8,500.00	
845	" "	8,500.00	
847	" "	8,500.00	
849	" " $12,000		
	Less value of gore hereafter appraised 750	11,250.00	
503	W. 55th St., subject to lease	5,000.00	
505/507	" "	12,000.00	
509	" "	6,000.00	

511	W. 55th St., subject to lease.....	$6,000.00	
513	" "	6,000.00	
515	" with old bldg.....	5,000.00	
517	" "	5,000.00	
519	" subject to lease	5,000.00	
521, 523, 525	" " " 3 vacant lots.....	15,000.00	
	Carried forward.....	$1,525,000.00	$1,704,000.00
22	Brought forward.....	$1,525,000.00	$1,704,000.00
527, 529, 531	W. 55th St. " " subject to lease.....	15,000.00	
533, 535	" " "	9,000.00	
537, 539	" " "	9,000.00	
541	" vacant.....	4,500.00	
543	" "	4,500.00	
792, 794, 796, 798	Eleventh Ave. plot about 3½ vacant lots..... ..	22,000.00	
800	Eleventh Ave., subject to lease.....	6,250.00	
802–804	" "	14,000.00	
545, 547, 549, 551	W. 55th St., " " " subject to lease.....	35,000.00	
546, 548, 550	W. 56- St., " "		
544	" vacant.....	4,500.00	
542	" "	4,500.00	
540	" "	4,500.00	
538	" subject to lease.....	4,500.00	
536	" "	4,500.00	
534	" "	4,500.00	
532	" vacant.....	4,500.00	
530	" "	4,500.00	
528	" subject to lease.....	5,000.00	
526	" vacant.....	5,000.00	
524	" "	5,000.00	
522	" "	5,000.00	
520	" "	5,000.00	
518	" "	5,000.00	
516	" "	5,000.00	
514	" "	5,000.00	
	Carried forward.....	$1,720,250.00	$1,704,000.00

23	Brought forward.....	$1,720,250.00	$1,704,000.00
512	W. 56 St. subject to lease.....	6,000.00	
510	" "	6,000.00	
508	" vacant.....	6,000.00	
506	" "	6,000.00	
504	" subject to lease.....	6,500.00	
502	" "	5,000.00	
	Block 1085.		
806	Eleventh Ave., with gore, subject to lease.....	9,000.00	
	Block 1103.		
793	Eleventh Ave., with gore, vacant...	10,000.00	
795	" subject to lease.....	6,000.00	
797	Eleventh Ave.....		
799	"		
801	"	" 22,500.00	
602 & 602a	W. 56th St.		
604 } 604a }	W. 56th St., vacant.....	3,000.00	
606 } 606a }	" "	3,000.00	
608	" "	3,000.00	
610	" with gore irregular, vacant.....	1,200.00	
	Block 1104.		
	Northwest corner 56th Street and Eleventh Ave., vacant.....	14,000.00	
			$1,827,450.00
			$3,531,450.00

7. Parcels of land of irregular shape known as the Cozine Gores, and immediately adjoining certain lots of the Cozine Farm, being real property devised by the fourth clause of the third codicil of the will of William B. Astor:

	Property at the southwest corner of 10th Avenue and 56th Street, described in		
24	Brought forward.....		$3,531,450.00
	the deed from Livingston Livingston, referee, to William B. Astor, dated October 27, 1864, recorded in New York County Liber 921 of Conveyances, page 183.....	$750.00	

Property on the northerly side of West 54th Street, distant 425 feet eastwardly from 9th Avenue described in a deed from Jonas Sparks and wife to William B. Astor, dated May 22, 1863, and recorded in New York County in Liber 876 of Conveyances, page 392	$7,400.00	
Property on the northerly side of West 54th Street commencing 350 feet eastwardly from 9th Avenue described in a deed from Peter B. Amory and wife to William B. Astor, dated April 15, 1863, and recorded in New York County in Liber 876 of Conveyances, page 390	13,200.00	
		$21,350.00

8. Real estate held after foreclosure by the trustees of the trust created by William B. Astor for the benefit of Laura Astor for life, with power to appoint, by deed dated the 28th day of October, 1865:

57 East 120th Street, lot and b'ld'g	10,000.00
Gross real property	$3,526,800.00

25 *Personal Property.*

1. Individual estate of Laura Astor Delano within the State of New York at the time of her death:

397 Shares N. Y. C. & H. R. R. Co. stock, par value $100, at 156¼	$62,031.25	
Bond of Julius Israel secured by mortgage on premises 143 Delancey Street, interest at 4½ % May and November 1.	20,000.00	
Accrued interest thereon	107.50	
Bond of Ray L. Berger, secured by mortgage on 85 Henry Street, interest 5 %, May and November 1	9,000.00	
Accrued interest thereon	53.75	
Money on deposit in Union Trust Company, with interest to June 15, 1902	971.39	
Accrued income to June 15, 1902, on trust created by deed of September 10, 1844	12,818.49	
Accrued income to June 15, 1902, on trust created by deed of September 6, 1849	1,308.57	

	Accrued income to June 15, 1902, on trust created by deed of October 28, 1865.....	$4,750.75	
	Accrued income to June 15, 1902, on trust created by fifth article of the will of William B. Astor.....	8,657.54	
			$119,699.24
26	Brought forward		$119,699.24
	2. Property transferred by William B. Astor to James Gallatin and John J. Astor, Jr., for the benefit of Laura Astor Delano for life, with power of appointment, by deed dated Septembr 6, 1849:		
	Bond of Jacob Lissner secured by mortgage on premises 722 Columbus Avenue	$15,000.00	
	Bond of Sarah J. O'Neill, secured by mortgage on premises 67 Irving Place.	15,000.00	
	Bond of Harris D. Colt, secured by mortgage on premises East 61st Street.....	20,000.00	
			50,000.00
	3. Personal property transferred by John Jacob Astor and William B. Astor to James Gallatin and John Jacob Astor the younger, as trustees for the benefit of Laura Astor Delano, for life, with power of appointment, by deed dated September 10, 1844:		
	Bond of Medora S. Bartlett, secured by mortgage on premises 497 Third Avenue	$12,000.00	
	Bond of Richard Irvin, secured by mortgage on premises 12 West 36th Street.	40,000.00	
	Bond of P. A. Grivet, secured by mortgage on premises 236 East 42d Street	12,500.00	
	Carried forward	$64,500.00	$169,699.24
27	Brought forward.....	$64,500.00	$169,699.24
	Bond of Herman Queller, secured by mortgage on premises 2169 First Avenue	20,000.00	
	Bond of Annie N. Harris, secured by mortgage on premises situated on Second Avenue near 37th Street.....	14,500.00	
	Bond of Joseph A. Kehoe, secured by mortgage on 131 West 93d Street.....	3,000.00	

Bond of Cornelia K. Averill, secured by mortgage on premises on West 41st St. near 8th Avenue	$40,000.00	
Cash uninvested	1,169.46	
		$143,169.46

4. Property transferred by William B. Astor to John Jacob Astor, Jr., William Astor and George De Forest Lord, as trustees for the benefit of Laura Astor Delano for life, with power of appointment by deed dated October 28, 1865:

Bond of Joel Hyams, secured by mortgage on premises 23–25 Greene Street.	$55,000.00	
Bond of Jonas Weil, secured by mortgage on premises 36 East 75th Street.	30,000.00	
Bond of Joseph A. Kehoe, secured by mortgage on premises 131 West 93d Street	11,000.00	
Carried forward	$96,000.00	$312,868.70
22 Brought forward	$96,000.00	$312,868.70
Bond of James M. Townsend, Jr., secured by mortgage on premises West 75th Street	17,000.00	
Bond of Henry W. Schmidt, secured by mortgage on premises on southwest corner of 49th Street and 9th Avenue.	17,000.00	
Bond of Frederick Meyer, secured by mortgage on premises on 25th Street near Second Avenue	18,000.00	
Bond of Dometille Denison, secured by mortgage on premises on Albany Road	10,000.00	
Uninvested cash	27,726.24	
		185,746.24

5. Personal property belonging to the trust estate created by the fifth clause of the will of William B. Astor:

$15,000, New York City, 3½%, consols, gold stock, due Oct. 1, 1915, coupons, at 107	$16,050.00	
$49,700, New York City, 3½% consols, gold stock, corporate registered stock, due October 1, 1918, at 108½	53,738.12	
Bond of Redmond Forrestal, secured by mortgage	6,000.00	

Bond of John L. Logan, secured by mortgage	$12,000.00	
Bond of Mary L. Cormack, secured by mortgage	12,000.00	
Carried forward	$99,788.12	$498,614.94
29 Brought forward	$99,788.12	$498,614.94
Bond of Mary L. Cormack, secured by mortgage	22,000.00	
Bond of Jules Vatable, secured by mortgage	12,000.00	
Bond of Jules Vatable, secured by mortgage	3,000.00	
Bond of William H. Post, secured by mortgage	12,000.00	
Uninvested cash	13,670.76	
		162,458.88
Gross personal estate		$661,073.82
Total value of real estate within the State of New York		3,562,800.00
Total value of person- estate within the State of New York		661,073.82
Total		$4,223,873.82

Personal estate of Laura Astor Delano not within the State of New York at the time of her death.

Bonds secured by mortgages on property in this State, amounting in the aggregate to	$890,588.75	
Accrued interest thereon	7,354.44	
Bonds of railroad corporations incorporated under laws of other States, of the par value of $133,000, market value	146,015.00	
Harlem R. & Portchester, 1st mortgage bonds, of the par value of $25,000, market value	25,000.00	
Carried forward	$1,068,958.19	
30 Brought forward	$1,068,958.19	
$10,000, Jersey City, 6 % water bonds, 1909, market value	11,200.00	
$10,000, Jersey City, 5 % assessment bonds, September, 1923, market value.	11,800.00	

3,065 shares, Morris & Essex R. R. Co., market value	301,136.25	
$8,000, New York City, 3-3/10 % stock, market value	8,000.00	
On deposit with Hottinguer & Company, Paris, France, cash and securities	239,827.00	
Cash without the State over and above debts	75,897.71	
		$1,716,819.15
Personal property belonging to the trust estate created by the special English will and codicils of William B. Astor held in Great Britain:		
£26,625-5-8, invested in British consols, which, at $4.86 to the £, equals		129,398.86
Total value of personal estate without the State		$1,846,218.01

Third. I further report that the following deductions should be made:

1. From the gross value of the individual real estate and the gross value of the individual personal estate within the State of New York		$699,699.24
31 Brought forward		$699,699.24
The proportionate amount of Executors' commissions	$73,036.35	
Expenses of administration	75,000.00	
	$148,036.35	
Total deductions		42,888.00
Leaving a net real and personal estate within the State of		$656,811.24
2. From the gross value of the personal property transferred by said deed of September 10, 1844		143,169.46
Trustees' commissions	$3,243.38	
Expenses of administration	5,000.00	
Total deductions		8,243.38
Leaving a net personal estate of		$134,926.08
3. From gross value of personal property transferred by deed dated September 6, 1849		$50,000.00
Trustees' Commissions	$690.00	
Expenses of administration	500.00	
Total deductions		1,190.00
Leaving a net personal estate of		$48,810.00

4. From gross value of real and personal property transferred by deed dated October 28, 1865		$195,746.24
Trustees' commissions	$4,294.92	
Expenses of administration	5,000.00	
Total deductions		9,294.92
Leaving a net estate of		$186,451.32

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5. From gross value of real and personal property held by trust created by fifth clause of the will of William B. Astor		$405,458.88
One-half trustees' commissions	$6,366.79	
Expenses of administration	5,000.00	
Total deductions		11,366.79
Leaving a net real and personal estate of		$394,092.09

Fourth. I further report that Laura Astor Delano died on the 15th day of June, 1902, at Geneva, in the Republic of Switzerland, being at the time of her death a non-resident of this State; that said decedent left a last will and testament bearing date the 18th day of October, 1900, with a codicil thereto bearing date the 8th day of April, 1901, copies of which are hereto annexed, which were duly admitted to probate in the Surrogates' Court of the County of New York on the 13th day of October, 1902, as a will of a non-resident, and letters testamentary were issued to the following as executors:

John Jacob Astor, 23 West 26th Street, New York City;
Warren Delano, Jr., 1 Broadway, New York City;
Franklin B. Lord, 49 Wall Street, New York City.

Fifth. I further report that the said Laura Astor Delano, in and by her last will and testament and codicil thereto, exercised various powers of appointment which were created as follows:

1. A power of appointment created by the tenth article of the will of John Jacob Astor and the fifth article of the will of William B. Astor (copies of said clauses are incorporated in the testimony annexed hereto).

2. A power of appointment created by the second clause of the fifth codicil of the will of William B. Astor (a copy of said clause is incorporated in the testimony annexed hereto).

33 3. A power of appointment created by the fifth clause of the will of William B. Astor (a copy of said clause is incorporated in the testimony hereto annexed).

4. A power of appointment created by William B. Astor by deed dated September 30, 1848 (a copy of said deed is hereto annexed).

5. A power of appointment created by William B. Astor by deed dated September 10, 1844 (a copy of said deed is hereto annexed.)

6. A power of appointment created by the fourth clause of the third codicil of the will of William B. Astor (a copy of said clause is incorporated in the testimony hereto annexed).

7. A power of appointment created by William B. Astor by deed dated October 28, 1865 (a copy of said deed is hereto annexed).

8. A power of appointment created by William B. Astor by deed dated September 6, 1819 (a copy of said deed is hereto annexed).

9. A power of appointment created by the special English will and codicils of William B. Astor (copies of which are hereto annexed).

Sixth. I further report that in and by the terms of the said will and codicil the said Laura Astor Delano disposed of her individual estate within the State of New York, as follows :

Laura Astor Chanler, great-great-niece of testratrix.... $10,000.00

34 The residue of her individual estate remaining after the above bequest, to

John Hubert de Stuers,
Margaret de Stuers and
Hubert de Stuers, grandnephews and grandniece of testatrix,
or to
John Armstrong Chanler,
Winthrop Astor Chanler,
Elizabeth Winthrop Chapman,
William Astor Chanler,
Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler and
Alida Beekman Emmet, grandnephews and grandnieces of testatrix,
or to
The Union Trust Company, as trustee for the said
John Armstrong Chanler,
Winthrop Astor Chanler,
Elizabeth Winthrop Chapman,
William Astor Chanler,
Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler and
Alida Beekman Emmet, and their children. } $646,811.24

35 Seventh. I further report that in and by the terms of said will and codicil, the said Laura Astor Delano appointed the property subject to power of appointment created by the tenth article of the will of John Jacob Astor, and by the fifth article of the will of William B. Astor to

John Hubert de Stuers, Margaret de Stuers, and Hubert de Stuers, grandnephews and grandniece of said Laura Astor Delano, or to John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, also grandnephews and grandnieces of said Laura Astor Delano.	$601,000.00

36 Eighth. I further report that in and by the terms of the said will and codicil, the said Laura Astor Delano appointed the property subject to power of appointment created by the second clause of the fifth codicil of the will of William B. Astor, to

John Hubert de Stuers, Margaret de Stuers, and Hubert de Stuers, grandnephews and grandniece of Laura Astor Delano, or to John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, great nephews and great nieces of Laura Astor Delano, or to The Union Trust Company, as trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet, and their children.	$230,000.00

37 Ninth. I further report that in and by the terms of the said will and codicil, the said Laura Astor Delano appointed the property which is subject to the power of appointment created by the fifth clause of the will of William B. Astor, to

John Hubert de Stuers, Margaret de Stuers, and Hubert de Stuers, grandnephews and grandniece of the said Laura Astor Delano, or to John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, great nephews and great nieces of Laura Astor Delano, or to The Union Trust Company, as trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet, and their children.	$394,092.09

Tenth. I further report that in and by the terms of the said will and codicil, the said Laura Astor Delano appointed the property which is subject to power of appointment created by William B. Astor by deed dated September 30, 1848, to

Arthur Astor Carey, nephew of said Laura Astor Delano	$50,000.00

38 Eleventh. I further report that in and by the terms of the said will and codicil, said Laura Astor Delano appointed the real and personal property which is subject to power of appointment created by William B. Astor by deed dated September 10, 1844, in equal shares, to

John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, great nephews and great nieces of said Laura Astor Delano	$1,962,376.08

Twelfth. I further report that in and by the terms of said will and codicil, the said Laura Astor Delano appointed the real estate and gores which were subject to the power of appointment created

by the fourth clause of the third codicil of the will of William B. Astor, in equal shares, to

John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, great nephews and great nieces of said Laura Astor Delano.	$21,350.00

39 Thirteenth. I further report that in and by the terms of said will and codicil, the said Laura Astor Delano appointed the property which is subject to the power of appointment created by William B. Astor by deed dated October 28, 1865, to

John Hubert de Stuers, Margaret de Stuers, and Hubert de Stuers, great nephews and great niece of Laura Astor Delano, or to John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, great nephews and great nieces of said Laura Astor Delano, or to The Union Trust Company, as trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet (great nephews and great nieces of said Laura Astor Delano) and their children.	$186,451.32

Fourteenth. I further report that in and by the terms of the said will and codicil the said Laura Astor Delano appointed the property subject to the power of appointment created by William B. Astor by deed dated September 6, 1849, to

Arthur Astor Carey, nephew of said Laura Astor Delano... $48,810.00

40 Fifteenth. I further report that all the persons interested in this estate are of full age and of sound mind, except that Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler, Dorothy Chanler, Lewis Stuyvesant Chanler, Jr., Alida Chanler, William Astor Chanler, second, Elizabeth Winthrop Emmet, Margaret Chanler Emmet, Christopher Temple Emmet, Jr., Hester Alida Emmet, and Chanler Armstrong Chapman, are infants whose interest in remainder herein is taxed against the Union Trust Company as trustee of the trusts created during the lifetime of the parents of said infants with remainders to the said infants; and John Armstrong Chanler, who has been represented herein by Thomas T. Sherman, as committee of his property.

Sixteenth. I further report that the following appearances were made before me in this proceeding:

Hon. Edward H. Fallows, Attorney for State Comptroller;

Roosevelt & Kobbe, Esqs., Attorneys for Arthur Astor Carey;

Henry De Forest Baldwin, Esq., Attorney for Franklin B. Lord;

Howard Mansfield, Esq., Attorney for John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers;

Evarts, Tracey & Sherman, Esqs., Attorneys for Thomas T. Sherman, as Committee of John Armstrong Chanler;

Morris, Sentell & Main, Esqs., Attorneys for Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet;

Coleman E. Kissam, Esq., Attorney for Franklin B. Lord and Lucius H. Beers, as trustees, and also for Robert W. Gillespie-
41 Stainton, Franklin B. Lord and Lucius H. Beers, trustees;

Emmet & Robinson, Esqs., Attorneys for Franklin B. Lord, Edmund L. Baylies and the New York Life Insurance & Trust Company, as trustee under the will of William B. Astor;

Peckham, Miller & King, Esqs., Attorneys for Union Trust Company, as trustee under the will of Laura Astor Delano.

Seventeenth. I further report that I appraised all the individual estate within the State of New York of the said Laura Astor Delano, deceased, at its fair market value on June 15th, 1902, the date of her death, as follows:

Laura Astor Chanler, great-great-niece of Laura Astor Delano, Cash legacy.....	$10,000.00
John Hubert de Stuers,	
Margaret de Stuers, and	
Hubert de Stuers, great nephews and great niece of Laura Astor Delano,	
or	
John Armstrong Chanler,	
Winthrop Astor Chanler,	
Elizabeth Winthrop Chapman,	
William Astor Chanler,	

Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler, and
Alida Beekman Emmet, great nephews and great nieces of Laura Astor Delano,

or

The Union Trust Company, as trustee for the said
John Armstrong Chanler,
Winthrop Astor Chanler,
42 Elizabeth Winthrop Chapman,
William Astor Chanler,
Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler, and
Alida Beekman Emmet, and their children,

Interest in the residuary real and personal estate of Laura Astor Delano within the State of New York, including therein the value of all life estates and remainders created by the said will..... $646,811.24

Eighteenth. I further report that I appraised all property with respect to which the said Laura Astor Delano exercised powers of appointment given to her as aforesaid, subject to tax herein, at its fair market value on the 15th day of June, 1902, the date of her death, as follows:

John Hubert de Stuers,
Margaret de Stuers, and
Hubert de Stuers, great nephews and great niece of Laura Astor Delano,

or

John Armstrong Chanler,
Winthrop Astor Chanler,
Elizabeth Winthrop Chapman,
William Astor Chanler,
Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler, and
Alida Beekman Emmet, great nephews and great nieces of Laura Astor Delano,

Interest in the property appointed by Laura Astor Delano by virtue of the power of appointment created by the tenth article of the will of John Jacob Astor, and by the fifth article of the will of William B. Astor..... $601,000.00

43 John Hubert de Stuers,
Margaret de Stuers, and
Hubert de Stuers, great nephews and great niece of Laura Astor Delano,

or
John Armstrong Chanler,
Winthrop Astor Chanler,
Elizabeth Winthrop Chapman,
William Astor Chanler,
Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler, and
Alida Beekman Emmet, great nephews and great nieces of Laura Astor Delano,

or
The Union Trust Company, as trustee for the said
John Armstrong Chanler,
Winthrop Astor Chanler,
Elizabeth Winthrop Chapman,
William Astor Chanler,
Lewis Stuyvesant Chanler,
Margaret Livingston Chanler,
Robert Winthrop Chanler and
Alida Beekman Emmet, and their children,

Interest in the property appointed by Laura Astor Delano by virtue of the power of appointment created by the second clause of the fifth codicil of the will of William B. Astor, including the value of all life estates and remainders created by said will of Laura Astor Delano..... $230,000.00

Interest in the property appointed by Laura Astor Delano by virtue of the power of appointment created by the fifth clause of the will of William B. Astor, including the value of all life estates and remainders created by said will of Laura Astor Delano..... 394,092.09

44 Interest in the property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated October 28, 1865, including all life estates and remainders created by said will of Laura Astor Delano..... 186,451.32

Arthur Astor Carey, nephew of said Laura Astor Delano,

Interest in the property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 30, 1848..... 50,000.00

Interest in the property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 6, 1849..... 48,810.00

John Armstrong Chanler, great nephew of said Laura Astor Delano,

One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..... 245,297.01

One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of third codicil of the will of William B. Astor..... 2,668.75

Winthrop Astor Chanler, great nephew of said Laura Astor Delano,

One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..... 245,297.01

One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of the third codicil of the will of William B. Astor.. 2,668.75

Elizabeth Winthrop Chapman, great niece of said Laura Astor Delano,

One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..... 245,297.01

One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of the third codicil of the will of William B. Astor..... 2,668.75

William Astor Chanler, great nephew of the said Laura Astor Delano,

One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..... 245,297.01

One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of the third codicil of the will of William B. Astor..... 2,668.75

Lewis Stuyvesant Chanler, great nephew of said Laura Astor Delano,

One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844 ..... 245,297.01

46 One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of the third codicil of the will of William B. Astor.. 2,668.75

Margaret Livingston Chanler, great-niece of said Laura Astor Delano,

One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..... 245,297.01

One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of the third codicil of the will of William B. Astor..... .. 2,668.75

Robert Winthrop Chanler, great nephew of said Laura Astor Delano,

One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844 ..... 245,297.01

One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of the third codicil of the will of William B. Astor..... 2,668.75

Alida Beekman Emmet, great niece of said Laura Astor Delano,

47 One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..... 245,297.01

One-eighth interest in parcels of real estate known as the Cozine Gores which were appointed by said Laura Astor Delano by virtue of the power of appointment created by the fourth clause of the third codicil of the will of William B. Astor..... 2,668.75

Nineteenth: I further report that the personal property owned by said Laura Astor Delano and not within the State of New York

at the time of her death, and also the property disposed of by the special English will of William B. Astor, being in the hands of the trustee in England at the date of her death, are not subject to a transfer tax.

Respectfully submitted,

ROBERT MAZET,
Appraiser.

Dated, New York City, December 9th, 1903.

48 *Order Fixing Tax Read by Respondent.*

At a Surrogates' Court held in and for the County of New York, at the County Court House in the City of New York, on the 11th Day of December, 1903.

Present: Hon. Abner C. Thomas, Surrogate.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

On reading the report of the Appraiser, Robert Mazet, Esquire, duly filed herein on the 9th day of December, 1903, whereby it appears that said decedent died on the 15th day of June, 1902, at Geneva, in the Republic of Switzerland, being claimed to be at the time of her death a non-resident of this State, and upon motion of Henry de Forest Baldwin, Esquire, attorney for the petitioners,

It is ordered and adjudged that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the act in relation to taxable transfers of property, and the tax to which said transfers are liable, is as follows:

49

Beneficiary.	Cash value of interest.	Tax assessed thereon.
Laura Astor Chanler.....	$10,000.00	$500.00
John Hubert de Stuers, Margaret de Stuers and Hubert de Steurs, or John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet, or The Union Trust Company, as trustee for said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and their children,		

	Beneficiary.	Cash value of interest.	Tax assessed thereon.
	Interest in residuary real and personal estate of Laura Astor Delano within the State of New York, including therein the value of all life estates and remainders created by said will.....	$646,811.24	$32,340.56
50	John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers, or John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet.		
	Interest in property appointed by Laura Astor Delano by virtue of the power of appointment created by the 10th article of the will of John Jacob Astor and the 5th article of the will of William B. Astor.....	601,000.00	30,050.00
	John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers, or John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Winthrop Chanler, and Alida Beekman Emmet, or The Union Trust Company, as trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, and their children.		

	Beneficiary.	Cash value of interest.	Tax assessed thereon.
51	Interest in property appointed by Laura Astor Delano by virtue of the power of appointment created by the 2d clause of the 5th codicil of the will of William B. Astor, including the value of all life estates and remainders created by the will of Laura Astor Delano.....	$230,000.00	$11,500.00
	Interest in property appointed by Laura Astor Delano by virtue of the power of appointment created by the 5th clause of the will of William B. Astor, including the value of all life estates and remainders created by said will of Laura Astor Delano.....	394,092.09	19,704.60
	Interest in property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated October 28, 1865, including all life estates and remainders created by the will of Laura Astor Delano.....	186,451.32	9,322.66
	Arthur Astor Carey:		
	Interest in property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 30, 1848..	50,000.00	2,500.00
	Interest in property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 6, 1849..	48,810.00	2,440.50

	Beneficiary.	Cash value of interest.	Tax assessed thereon.
52	John Armstrong Chanler:		
	One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..	$245,297.01	$12,264.85
	One-eighth interest in parcels of real estate, known as the Cozine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor.....	2,668.75	133.43
	Winthrop Astor Chanler:		
	One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..	245,297.01	12,264.85
	One-eighth interest in parcels of real estate, known as the Cozine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor...	2,668.75	133.43
53	Elizabeth Winthrop Chapman:		
	One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..	245,297.01	12,264.85
	One-eighth interest in parcels of real estate, known as the Cozine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor.....	2,668.75	133.43

	Beneficiary.	Cash value of interest.	Tax assessed thereon.
	William Astor Chanler:		
	One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..	$245,297.01	$12,264.85
	One-eighth interest in parcels of real estate, known as the Cazine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor.....	2,668.75	133.43
54	Lewis Stuyvesant Chanler:		
	One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844..	245,297.01	12,264.85
	One-eighth interest in parcels of real estate, known as the Cozine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor.....	2,668.75	133.43
	Margaret Livingston Chanler:		
	One eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844.....	245,297.01	12,264.85
	One-eighth interest in parcels of real estate, known as the Cozine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor.....	2,668.75	133.43

	Beneficiary.	Cash value of interest.	Tax assessed thereon.
55	Robert Winthrop Chanler:		
	One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844	$245,297.01	$12,264.85
	One-eighth interest in parcels of real estate, known as the Cozine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor	2,668.75	133.43
	Alida Beekman Emmet:		
	One-eighth interest in real and personal property appointed by Laura Astor Delano by virtue of the power of appointment created by William B. Astor by deed dated September 10, 1844	245,297.01	12,264.85
	One-eighth interest in parcels of real estate, known as the Cozine Gores, which were appointed by said Laura Astor Delano, by virtue of the power of appointment created by the 4th clause of the 3rd codicil of the will of William B. Astor	2,668.75	133.43

56 And, on motion of the Surrogate, it is

Further ordered that all questions as to the taxability of personal property owned by said Laura Astor Delano or subject to her power of appointment, which personal property was not within the State of New York at the time of her death are hereby reserved until the Surrogate has determined the question of fact as to whether she was or was not a resident of this State at the time of her death and this matter is remitted to the Appraiser to take further evidence as to said question of fact, and to report the same to the Surrogate with his opinion.

ABNER C. THOMAS, *Surrogate.*

Notice of Appeal to Surrogate by Adults.

Surrogates' Court, County of New York.

In the Matter of the Transfer Tax on the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

Please to take notice that John Hubert de Stuers, Margaret de Stuers, Hubert de Stuers, John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler,
57 Robert Winthrop Chanler, Alida Beekman Emmet and the Union Trust Company, as Trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and their children and Arthur Astor Carey, are dissatisfied with the appraisement herein of the property, with respect to which the said Laura Astor Delano exercised certain powers of appointment created as follows:

1. A power of appointment created by William B. Astor by deed dated September 30, 1848.

2. A power of appointment created by William B. Astor by deed dated September 10, 1844.

3. A power of apointment created by William B. Astor by deed dated October 28, 1865.

4. A power of appointment created by William B. Astor by deed dated September 6, 1849;

and hereby object to the report of the appraiser filed herein on the 9th day of December, 1903, and to the order or decree made herein fixing, assessing and determining the transfer tax in respect to the said property so appointed as aforesaid and entered herein on the 11th day of December, 1903, and hereby appeals to the Surrogate from the said appraisal and said assessment and determination of said tax, and from the said order or decree.

The grounds upon which said appeal is taken are:

I. That Article X of Chapter 908, Laws 1896, and the amendments thereto entitled Taxable Transfers, does not confer upon the Surrogates' Court of the County of New York jurisdiction over the property appointed to the appellants attempted to be taxed in this proceeding.

II. That Chapter 284 of the Laws of 1897 does not apply
58 to the property of these appellants for the reason that said property was acquired by them under deeds made in the years 1844, 1848, 1849 and 1865.

III. That Chapter 284 of the Laws of 1897 is unconstitutional and void, under Section 24, Article III of the Constitution of the State of New York, in that it does not distinctly state the tax and object to which it is to be applied.

IV. That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interests of these appellants, is unconstitutional and void under Section 6, Article I of the Constitution of the State of New York, which provides that no person shall be deprived of property without due process of law, and that private property shall not be taken for public use without just compensation.

V. That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appellants herein, is unconstitutional and void and that it is repugnant to Section 10, Article I of the Constitution of the United States in that it impairs the obligation of contracts between William B. Astor and the appellants herein.

VI. That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appellants, is unconstitutional and void as being repugnant to Section I of the XIV Amendment of the Constitution of the United States in that it seeks to deprive citizens of property without due process of law, and to deny to persons affected thereby the equal protection of the laws.

VII. That such portions of the property transferred by said deeds of 1844, 1848, 1849 and 1865 as were, under the terms of any of said deeds granted to any of the said appellants on failure of ap-
59 pointment by said Laura A. Delano are not subject to any tax herein.

VIII. That if the property appointed to, or in trust for, any of the appellants herein under the terms of said deeds of 1844, 1848, 1849 and 1865, is held to be subject to a tax herein, such tax should be fixed with respect to the relationship of the appellants herein to William B. Astor and not with respect to their relationship to the said Laura Astor Delano.

Dated December 11, 1903.

ROOSEVELT & KOBBE,
Att'ys for Arthur Astor Carey.

MORRIS, SENTELL & MAIN,
Att'ys for Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet.

EVARTS, TRACY & SHERMAN,
Att'ys for Thos. T. Sherman, as Committee for John Armstrong Chanler.

HOWARD MANSFIELD,
Att'y for John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers.

PECKHAM, MILLER & KING,
Att'y- for the Union Trust Co. as Trustee.

To the Clerk of the Surrogates' Court, New York County.
Edward H. Fallows, Att'y for Comptroller of the State of New York.
Henry de Forest Baldwin, Att'y for Exrs. of Laura A. Delano.

60 *Order Appointing Guardian of Laura Astor Chanler and Others.*

At a Surrogate's Court held in and for the County of New York, at Chambers thereof, in the County Court House, in the Borough of Manhattan, City of New York, on the 17 day of February, 1905.

Present: Hon. Frank T. Fitzgerald, Surrogate.

In the Matter of the Transfer Tax upon the Estate of LAURA A. DELANO, Deceased.

On reading and filing the annexed petitions of Rutherford Stuyvesant, both vertified the 29th day of January, 1904, whereby it appears to the satisfaction of this Court that said Rutherfurd Stuyvesant is the next friend of Chanler Armstrong Chapman, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler and Theodore Ward Chanler, infants, and that he has no interest, herein adverse to that of said infants, and is not entitled to share in the estate or fund in which said infants are interested; that said infants are under the age of fourteen years and have no general guardian, and that said infant Chanler Armstrong Chapman resides with his father John Jay Chapman, whose wife Elizabeth Winthrop Chapman is interested in this proceeding, and that said infants Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler and Theodore Ward Chanler reside with their
61 father Winthrop Astor Chanler, who is also interested in this proceeding, and that all of said infants are necessary parties to this proceeding and have been duly served with the notice of appraisement herein; and on reading and filing the annexed affidavit of John Jay Chapman, the father of said infant Chanler Armstrong Chapman, verified January 30, 1904, showing that he has knowledge of and approves of this application; and on reading and filing the annexed affidavit of Winthrop Astor Chanler, the father of said infants Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler and Theodore Ward Chanler, verified January 29, 1904, showing that he has knowledge of and approves of this appliction; and on reading and filing the annexed petition of Laura Astor Chanler, verified December 23rd, 1903, whereby it appears that the said Laura Astor Chanler is an infant over fourteen years of age and has no general guardian and that she resides with her father Winthrop Astor Chanler, who is also interested in this proceeding and that said infant Laura Astor Chanler is a necessary party to this proceeding and has been duly served with the notice of appraisement herein and praying for the appointment of Egerton L. Winthrop, Jr., as special guardian for her herein, and on reading and filing the annexed affidavit of Winthrop Astor Chan-

ler, the father of said infant Laura Astor Chanler, verified December 23, 1903, showing that he has knowledge of and approves of this application and that he has not influenced said infant Laura Astor Chanler in the choice of said Egerton L. Winthrop, Jr., as such special guardian; and on reading and filing the annexed consent and affidavit of Egerton L. Winthrop, Jr., Esq., counsellor at law of the City, County and State of New York, whereby it appears that he is a competent and proper person to protect the interests of said infants Chanler Armstrong Chapman, Beatrice Margaret
62 Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Laura Astor Chanler herein, and that he has no interest adverse to that of said infants and is not connected in business with the attorneys or counsel of any parties to this proceeding, nor with any of the parties to this proceeding; and on reading and filing the annexed notice of this motion for the appointment of said Egerton L. Winthrop, Jr., as special guardian for the infant Chanler Armstrong Chapman (said infant Chanler Armstrong Chapman being the only one of the above named infants who is within the State of New York) with proof of the due service thereof on said infant Chanler Armstrong Chapman and on Elizabeth Winthrop Chapman, mother of said infant, and with whom said infant resides and no one appearing in opposition hereto, now on motion of Alphonse Dession, attorney for the petitioner herein, it is

Ordered that said Egerton L. Winthrop, Jr., Esq., be and he hereby is appointed the special guardian of said infants Chanler Armstrong Chapman, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Laura Astor Chanler, to appear for and protect their interests in this proceeding.

FRANK T. FITZGERALD, *Surrogate.*

63 *Order Appointing Guardian of Elizabeth Winthrop Emmet and Others.*

At a Surrogate's Court held in and for the County of New York, at Chambers thereof, in the County Court House, in the Borough of Manhattan, City of New York, on the 2nd day of February, 1904.

Present: Hon. Frank T. Fitzgerald, Surrogate.

In the Matter of the Transfer Tax upon the Estate of LAURA A. DELANO, Deceased.

On reading and filing the annexed petition of Rutherford Stuyvesant, verified the 29th day of January, 1904, whereby it appears to the satisfaction of this Court that said Rutherfurd Stuyvesant is the next friend of Elizabeth Winthrop Emmet, Margaret Chanler Emmet, Christopher Temple Emmet, Jr., and Hester Alida Emmet,

infants, and has no interest herein adverse to that of said infants and is not entitled to share in the estate or fund in which said infants are interested; that said infants are each under the age of fourteen years and have no general guardian and that said infants reside with their father Christopher Temple Emmet, whose wife Alida Beekman Emmet is interested in this proceeding, and that said infants are necessary parties to this proceeding and have been duly served with the notice of appraisment herein; and on reading and filing the affidavit of Christopher Temple Emmet, the father of said infants, verified the 30th day of January, 1904, showing that he has knowledge of and approves of this application, and on reading and
64 filing the annexed consent and affidavit of Grenville T. Emmet, Esq., counsellor at law of the City, County and State of New York, whereby it appears that he is a competent and proper person to protect the interests of said infants herein and that he has no interest adverse to that of said infants and is not connected in business with the attorneys or counsel of any parties to this proceeding, nor with any of the parties to this proceeding, Now on motion of Alphonse Dession, attorney for said petitioner, it is

Ordered that said Grenville T. Emmet, Esq., be and he hereby is appointed the special guardian of said infants Elizabeth Winthrop Emmet, Margaret Chanler Emmet, Christopher Temple Emmet, Jr., and Hester Alida Emmet to appear for and protect their interests in this proceeding. FRANK T. FITZGERALD, *Surrogate.*

65 *Order Appointing Guardian of Dorothy Chanler and Others.*

At a Surrogate's Court held in and for the County of New York, at Chambers thereof, in the County Court House, in the Borough of Manhattan, City of New York, on the 17th day of February, 1904.

Present: Hon. Frank T. Fitzgerald, Surrogate.

In the Matter of the Transfer Tax upon the Estate of LAURA A. DELANO, Deceased.

On reading and filing the annexed petitions of Rutherford Stuyvesant, both verified the 29th day of January, 1904, whereby it appears to the satisfaction of this Court that said Rutherford Stuyvesant is the next friend of Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, second, infants, and that he has no interest herein adverse to that of said infants and is not entitled to share in the estate or fund in which said infants are interested; that said infants are under the age of fourteen years and have no general guardian, and that said infant Dorothy Chanler resides with her mother Julia Chanler, whose husband Robert Winthrop Chanler is interested in this proceeding, and that said infants Alida Chanler and William Astor Chanler, second, reside with their father Lewis Stuyvesant Chanler, who is interested in this proceeding, and that said infant Lewis Stuyvesant Chanler, Junior, resides in England, and that all of said infants are necessary parties to this proceeding and have been duly served with the notice of ap-
66 praisement herein; and on reading and filing the annexed affidavit of Robert Winthrop Chanler, the father of said infant

Dorothy Chanler, verified January 30, 1904, showing that he has knowledge of and approves of this application; and on reading and filing the annexed affidavit of Lewis Stuyvesant Chanler, the father of the infants Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, second, verified February 1, 1904, showing that he has knowledge of and approves of this application, and on reading and filing the annexed consent and affidavit of Bronson Winthrop, Esq., counsellor at law of the City, County and State of New York, whereby it appears that he is a competent and proper person to protect the interests of said infants Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, second, herein, and that he has no interest adverse to that of said infants and is not connected in business with the attorneys or counsel of any parties to this proceeding, nor with any of the parties to this proceeding; and on reading and filing the annexed notice of motion for the appointment of said Bronson Winthrop, as special guardian for the infants Alida Chanler and William Astor Chanler, second, said infants Alida Chanler and William Astor Chanler, second, being all of the above named infants who are within the State of New York,) with proof of the due service thereof on said infants Alida Chanler and William Astor Chanler, second, and on Alice Chanler, mother of said infants and with whom said infants reside, and no one appearing in opposition hereto.

Now on motion of Alphonse Dession, attorney for the petitioner herein, it is

Ordered that said Bronson Winthrop, Esq., be and he hereby is appointed the special guardian of said infants Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, second, to appear for and protect their interests in this proceeding. FRANK T. FITZGERALD, *Surrogate.*

67 *Notice of Appeal to Surrogate by Infants.*

Surrogates' Court, County of New York.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

Please to take notice, that Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by Egerton L. Winthrop, Jr., their special guardian; Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Junior, and Hester Alida Emmet, by Grenville T. Emmet, their special guardian; Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, Second, by Bronson Winthrop, their special guardian, are dissatisfied with the appraisement herein of the property passing under the last will and testament of Laura Astor Delano, and of the property with respect to which the said Laura Astor Delano exercised certain powers of appointment created as follows:

1. A power of appointment created by William B. Astor by deed dated September 10, 1844.

2. A power of appointment created by William B. Astor by deed dated October 28, 1865.

68 And hereby object to the report of the Appraiser filed herein on the 9th day of December, 1903, and to the order or decree made herein fixing, assessing and determining the transfer tax in respect to the said property so appointed as aforesaid and entered herein on the 11th day of December, 1903, and hereby appeal to the Surrogate from the said appraisal and said assessment and determination of said tax, and from the said order or decree.

The grounds upon which said appeal is taken are:

I. That Article X of Chapter 908, Laws of 1896, and the amendments thereto entitled Taxable Transfers, does not confer upon the Surrogates' Court of the County of New York jurisdiction over the property appointed to the appellants attempted to be taxed in this proceeding.

II. That Chapter 284 of the Laws of 1897 does not apply to the property of these appellants for the reason that said property was acquired by them under deeds made in the years 1844 and 1865.

III. That Chapter 284 of the Laws of 1897 is unconstitutional and void, under Section 24, Article III of the Constitution of the State of New York, in that it does not distinctly state the tax and object to which it is to be applied.

IV. That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interests of these appellants, is unconstitutional and void under Section 6, Article I of the Constitution of the State of New York, which provides that no person shall be deprived of property without due process of law, and that private property shall not be taken for public use without just compensation.

V. That Article X of Chapter 908, Laws of 1896, and the
69 amendments thereto, as applied to the rights and interests of the appellants herein, is unconstitutional and void and that it is repugnant to Section 10, Article I of the Constitution of the United States in that it impairs the obligation of contracts between William B. Astor and the appellants herein.

VI. That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appellants, is unconstitutional and void as being repugnant to Section 1 of the XIV Amendment of the Constitution of the United States in that it seeks to deprive citizens of property without due process of law, and to deny to persons affected thereby the equal protection of the laws.

VII. That such portions of the property transferred by said deeds of 1844 and 1865 as were, under the terms of any of said deeds granted to any of the said appellants on failure of appointment by said Laura A. Delano are not subject to any tax herein.

VIII. That if the property appointed to, or in trust for, any of the appellants herein under the terms of said deeds of 1844 and 1865, is held to be subject to a tax herein, such tax should be fixed with respect to the relationship of the appellants herein to William B. Astor

and not with respect to their relationship to the said Laura Astor Delano.

IX. That in respect to the property of the said Laura Astor Delano devised and bequeathed by her under her last will and testament, and in respect to the property appointed by said Laura Astor Delano under powers of appointment contained in the following instruments:

1. The second clause of the fifth codicil of the will of William B. Astor.

70 2. The fifth clause of the will of William B. Astor.

3. Deed of trust between William B. Astor and Laura A. Delano and others, dated October 28, 1865.

Which property was devised and bequeathed or appointed by said Laura Astor Delano pursuant to such powers to the Union Trust Company of New York, as trustee, in trust for John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet, during their respective lives, with remainder to their respective issues in equal shares, or in default of such issue then living to the then surviving issue of Margaret A. Chanler, the cash value of such life estates in said property, and the cash value of the remainders therein, should be determined separately and the amount of tax to which the said life estates and said remainders are respectively liable should be separately determined.

Dated September 12, 1904.

EGERTON L. WINTHROP, JR.,
Special Guardian for Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman.

GRENVILLE T. EMMET,
Special Guardian for Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Junior, and Hester Alida Emmet.

71 BRONSON WINTHROP,
Special Guardian for Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, Second.

To the Clerk of the Surrogates' Court, New York County.

Edward H. Fallows, Attorney for Comptroller of the State of New York.

Henry de Forest Baldwin, Attorney for the Executors of Laura A. Delano.

Morris, Sentell & Main, Attorneys for Winthrop Astor Chanler *et al.*

Evarts, Tracy & Sherman, Attorneys for Thomas T. Sherman, as Committee, etc.

Howard Mansfield, Attorney for John Hubert de Stuers *et al.*

Peckham, Miller & King, Attorneys for Union Trust Company.

72 *Order of Affirmance Appealed from.*

At a Surrogate's Court Held in and for the County of New York, at the County Court House, in the City of New York, on the 22nd Day of March, 1905.

Present: Hon. Frank T. Fitzgerald, Surrogate.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

John Hubert de Stuers, Margaret de Stuers, Hubert de Stuers, John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and The Union Trust Company as Trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and their children, Arthur Astor Carey, and the infants, Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by Egerton L. Winthrop, Jr., their special guardian; Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Jr., and Hester Alida Emmet, by Grenville T. Emmet, their special guardian; Dorothy
73 Chanler, Lewis Stuyvesant Chanler, Jr., Alida Chanler and William Astor Chanler, Second, by Bronson Winthrop, their special guardian, having appealed to the Surrogate's Court of New York County from an order entered in said Court on the 11th day of December, 1903.

And the said appeal having thereafter come on to be heard before this Court, and after hearing Messrs. Lucius H. Beers, of counsel for the appellants, and George M. Judd, Esq., of counsel for the respondent and due deliberation having been had,

Now, on motion of Edward H. Fallows, Esq., the attorney for the State Comptroller, respondent,

It is ordered and adjudged that the order appealed from be and the same hereby is affirmed.

Enter,

FRANK T. FITZGERALD, *Surrogate.*

Minutes of Hearing.

Surrogates' Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

Hearing Before Appraiser Robert Mazet, Room 1404, Home Life Building, 256 Broadway, Borough of Manhattan, City of New York, December 2d, 1903.

74 Appearances.

Hon. Edward H. Fallows (by G. M. Judd, Esq.), Attorney for State Comptroller.

Roosevelt & Kobbe, Esqs., Attorneys for Arthur Astor Carey.

Henry de Forest Baldwin, Esq., Attorney for executors.

Howard Mansfield, Esq., Attorney for John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers.

Evarts, Tracy & Sherman, Esqs., Attorneys for Thomas T. Sherman, as committee of John Armstrong Chanler.

Morris, Sentell & Main, Esqs., Attorneys for Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet.

Coleman E. Kissam, Esq., Attorney for Franklin B. Lord and Lucius H. Beers, as trustees, and also for Robert W. Gillespie Stainton, Franklin B. Lord and Lucius H. Beers, trustees.

Emmet & Robinson, Esqs., Attorneys for Franklin B. Lord, Edmund L. Baylies and New York Life Insurance & Trust Company, as trustees under the will of William B. Astor.

Peckham, Miller & King, Esqs., Attorneys for Union Trust Company, as trustee under the will of Laura Astor Delano.

75 (Mr. Lucius H. Beers states that he is authorized to have noted on the record the appearances of the above named attorneys.)

Mr. MAZET: An order having been made in this proceeding by Honorable Abner C. Thomas, Surrogate, bearing date December 9th, 1902, staying all proceedings herein before the Appraiser pending appeal, and the matter having been appealed to the Court of Appeals and a decision having been rendered herein on the 24th day of November, 1903, sustaining the order of the Surrogate in this proceeding, but no order having yet been entered on the said decision or served on the Appraiser, it is hereby stipulated by all the interested parties that these proceedings may go on as though an order had been formally entered on said decision.

FRANKLIN B. LORD, called as a witness, being sworn, testified as follows:

Examined by Mr. BEERS:

Q. You are one of the executors of the will of Mrs. Laura Astor Delano?
A. Yes.
Q. Will you produce a copy of the will?
A. I produce a copy.

The copy of the will was offered in evidence by Mr. Beers received and marked Exhibit 1 of this date.

Q. Will you produce the letters testamentary that were issued to you under this will?
A. I will.

The letters testamentary on the estate of said Laura Astor Delano, deceased, were offered in evidence by Mr. Beers; received and marked Exhibit 2 of this date.

76 Q. Were you acquainted with Mrs. Laura Astor Delano in her life time?
A. I was.
Q. For how long before her death?
A. For a great many years; I should say for 25 years.
Q. Please state what knowledge you have with respect to the place of abode of Mrs. Laura Astor Delano at the time of her decease, and for—say—10 years prior to her death.
A. The last time I saw Mrs. Delano, I should say, was about 1889; after that time, I understood from hearsay and from mutual acquaintances and members of the family, that she was living at Monte Carlo. Since 1899 I corresponded with her regularly, and her letters have been dated at Monte Carlo during the winter months and from Geneva, Switzerland, during the summer.
Q. Can you state when and where she died?
A. She died, according to my advices, at Geneva.
Q. On what day?
A. On the fifteenth of June, 1902.
Q. Do you know whether Mrs. Delano died seized of any real property situate in the State of New York, and if so, please state where the property was situated?
A. She owned at the time of her death real estate on Fifth Avenue between 33rd and 34th Streets, Nos. 341, 343, 345 and 347 Fifth Avenue; and also No. 67 Third Avenue.
Q. Was that the only real property of which she died seized situated in the State of New York?
A. To the best of my knowledge.
Q. Did Mrs. Delano at the time of her death own any stocks in New York corporations, if so, please state what stocks, and what the market value was on the date of her death on the 15th of June, 1902?
A. She was the owner of 397 shares of stock of the New York Central & Hudson River Railroad Company of the par value of

$39,700, equivalent, at 156¼—which I believe was the market value on the day of her death—to $62,031.25.

Q. Were those the only stocks of New York corporations which she had at the time of her death, to the best of your information?

77 A. To the best of my knowledge.

Q. Did she have any moneys on deposit in the State of New York, and if so, please state to what amount?

A. She had $1,655.76 on deposit in the Union Trust Company in this city.

By Mr. JUDD:

Q. Was there any accrued interest on that deposit?

Mr. BEERS: We will have to compute that.

By Mr. BEERS:

Q. Did Mrs. Delano own any other securities than the stock of the New York Central Railroad to which you have referred, which securities were actually within the State of New York at the time of her death?

A. You mean bonds, the bonds being within this State?

Q. Yes, the securities themselves—the evidence of the debt being within this State.

A. She owned a bond for $9,000 secured by mortgage on 85 Henry Street; and a bond for $20,000, secured by mortgage on 143 Delancey Street.

Q. And those were the only securities the evidence of which was physically within the State of New York at the date of her death, to the best of your knowledge?

A. That is the fact.

Q. Please state the amount of the interest accrued and unpaid up to June 15th, 1902, on the bonds and mortgages to which you have referred.

A. The accrued interest on the $9,000 mortgage from May 1st, 1902, up to which time interest had been paid, to June 15th, 1902, amounts to $53.75. The accrued interest on the $20,000 mortgage from May 1st, the interest date, to June 15th, amounts to $107.50. In addition to the amount on deposit in the Union Trust Company, there was accrued interest on the deposit and other deposits which amounted on June 30th, to $971.39.

78 By Mr. MAZET:

Q. This interest was on some deposit that had been drawn out before the date of her death?

A. Yes.

Q. And that amount of $1,655 is the balance?

A. Yes.

By Mr. JUDD:

Q. How old was Mrs. Delano at the time of her death?

A. I think that Mrs. Delano was about 74 years old; she was married in 1844.

Q. How long before her death did she go to Monte Carlo, about?

A. My recollection is she had been there some time before 1890. Whether she had made it her home or whether she had merely visited Monte Carlo from time to time, I cannot say.

Q. From the time she left the United States prior to 1890, did she ever return to the United States?

A. No, I believe not.

Q. She remained continuously outside the United States, as far as you know, at Monte Carlo or Geneva?

A. So far as I know.

Q. Where did she reside at the time she left the United States?

A. At 190 Madison Avenue.

Q. Did she keep that house open after she left and up to the time of her death?

A. No, it was rented prior to her death, and was occupied at one time by Mr. August Belmont.

Q. Was it rented immediately upon her leaving the United States?

A. That I can't say.

Q. Was it rented furnished or unfurnished?

A. Whether there was any furniture in it when Mr. Belmont had it or not I am not certain, but I know that all the furniture was removed.

Q. Do you know whether or not she took it abroad with her?

A. I think so, except such as she disposed of in this country.

Q. So that she had no home during all these years that she was abroad prior to her death ready for occupancy, or anything of that nature, to which she could have returned if she so desired?

A. No.

79 Q. Did she express to you any intention when she went away as to returning, or otherwise, as far as you recollect?

A. No, I am quite certain before she went away she never expressed any intention to me.

Q. In the correspondence you have had with her since she has been abroad, was there any expression in her letters regarding her returning, or otherwise?

A. I don't think there was; the letters were largely business letters.

Q. Do you understand from her will, which was made about three years before her death, and which has been offered in evidence here, that she regarded herself at that time as a resident of Dutchess County, New York?

Mr. BEERS: That is a conclusion of law.

A. I haven't any opinion on that subject which is worth entering on the minutes.

Q. As I understand you, Mrs. Delano owned no bonds on deposit in New York State at the time of her death?

A. No, except the two bonds I have referred to, secured by mortgage.

Q. Did she have any furniture whatever in the United States?

A. Not to the best of my knowledge.

Q. Did she, prior to her death, as far as you know, make any

transfer of property by deed, gift, grant, bargain or sale, in contemplation of her death, or to take effect at or after her death, the property referred to being property in New York State?

A. Not to the best of my knowledge.

Q. As far as you are aware, you have testified to all the property, both real and personal, which Mrs. Delano individually owned at the time of her death which was situate in the State of New York?

A. I have.

Q. It appears from Mrs. Delano's will that she intended by it to exercise certain powers of appointment. Please state how the powers of appointment exercised by her will were created, and produce, if you have them, the instruments by which such powers of ap-
80 pointment were created, and state who are now the trustees under the instruments by which these powers were created, and what property, real and personal, was appointed by the will of Mrs. Delano under each power.

Mr. BEERS: All of the parties whose appearance has been noted object to this question on the following grounds:

That Article X of Chapter 908 of the Laws of 1896, and the amendments thereto, entitled "Taxable Transfers," do not confer upon the Surrogates' Court of the County of New York jurisdiction over the property appointed by the will of Mrs. Laura Astor Delano for the purpose of assessing the same for a transfer tax.

Second. That Chapter 284 of the Laws of 1897, is unconstitutional and void under Section 24, Article III, of the Constitution of the State of New York, in that it does not distinctly state the tax and object to which it is to be applied.

Third. That Article X of Chapter 908 of the Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appointees under the will of Laura Astor Delano, is unconstitutional and void under Section VI of Article 1 of the Constitution of the State of New York, which provides that no person shall be deprived of property without due process of law, and private property shall not be taken for public uses without just compensation.

Fourth. That Article X of Chapter 908 of the Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appointees under the will of Laura Astor Delano, is unconstitutional and void, and that it is repugnant to Section 10 of Article I of the Constitution of the United States, in that it impairs the obligations of contracts.

Fifth. That Article X of Chapter 908 of the Laws of 1896,
81 and the amendments thereto, as applied to the rights and interests of the appointees under the will of Laura Astor Delano, is unconstitutional and void, being repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it seeks to deprive citizens of property without due process of law and to deny persons affected thereby equal protection of the laws.

By Mr. JUDD:

All these objections, both constitutional and otherwise, have been overturned by the decision of the Court of Appeals in Matter of Laura

Astor Delano handed down November 24th, 1903, which held that the transfer of the property passing by virtue of the exercise by Laura Astor Delano in favor of Arthur Astor Carey of the powers of appointment created by the two deeds of 1848 and 1849, is taxable under the provisions of sub-division five of Section 220 as added to the Tax Law of 1896 by Chapter 284 of the Laws of 1897. This decision was made by the Court of Appeals in a proceeding taken as follows: Ater you had been appointed Appraiser and before you had made your report, and on the 9th day of December, 1902, an order was issued out of the Surrogates' Court of New York County upon an affidavit of George C. Kobbe, one of the attorneys for Arthur Astor Carey, to show cause before said Court why said proceedings should not be dismissed as to Arthur Astor Carey and as to the property mentioned in said two deeds. From the order entered in the Surrogates' Court of New York County on the 2nd day of February, 1903, denying the motion to dismiss said procedings, an appeal was taken by Arthur Astor Carey to the Appellate Division, where said order was reversed. Subsequently, an appeal was taken by the Comptroller to the Court of Appeals, whose decision has been
82 handed down as before mentioned.

The State Comptroller further contends that as far as the transfer of the property passing to Arthur Astor Carey by virtue of the exercise by Laura Astor Delano of the powers of appointment contained in said deeds made in 1848 and 1849 is concerned, and for the purposes of the present proceeding for the appraisal by you of such transfer of property to Arthur Astor Carey, all questions, exceptions or objections whether constitutional, jurisdictional or otherwise, have been determined in such proceeding taken as aforesaid by Arthur Astor Carey, and such proceeding is *res adjudicata* thereto. If Arthur Astor Carey desires to raise any federal questions, it can only be done by an appeal to the United States Supreme Court from the order entered upon the decision of the Court of Appeals in the proceeding above mentioned.

Mr. MAZET: Objection overruled.

Exception.

A. First, by the tenth clause of the will of the first John Jacob Astor, he devised said real property to his son, William B. Astor, for life, with power of appointment. By the fifth clause of the will of William B. Astor, the latter appointed a portion of the property devised to him as aforesaid by the will of his father to his daughter, Laura Astor Delano, for life, giving her a further power of appointment. For the purpose of defining the property so appointed by the fifth clause of the will of William B. Astor, the executors of William B. Astor made a deed to Laura Astor Delano, recorded in New York County, Liber 1369 of Conveyances, page 218. The property affected by these powers of appointment contained in the tenth clause of the will of John Jacob Astor and the fifth clause of the will of William B. Astor consists of real estate in New York City known as
83 308 and 310 West Fifteenth Street, and 55 to 61, inclusive, West Seventeenth Street, and 268 to 276, inclusive, Sixth Avenue. I produce a copy of the tenth clause of the will of John

Jacob Astor, and of the second and fifth clauses of the will of William B. Astor.

Said clauses follow:

Will of John Jacob Astor, Tenth Clause.

Tenth: All the rest, residue and remainder of my real and personal estate, I give and devise to my son, William B. Astor; to have and to hold the said real estate to him for his life. And I authorize him to appoint the same after his death, to and amongst his children and their issue, in such shares and for such estates, and on such conditions as he may think fit, by deed or by will; and in case he shall leave no such valid appointment, I devise the same to his children, and their heirs and assigns, forever, including as well those now born as subsequently born children. And I hereby charge upon the said residuary estate thus devised portions of Two hundred thousand dollars, to be settled upon each of his daughters, and her issue, in such manner as he may think fit, subject to the condition of their marrying with the consent of himself or his wife, or such persons as he may nominate in his will; which portions are to be set apart out of the real estate devised to him as above and which, when set apart, are not to form any encumbrance upon the residue. And in case of his leaving no appointment as aforesaid, these portions are to be considered as part of his daughters' shares on the division of the estate now devised among his children. And as to the personal estate bequeathed to him, it is my will that he employ the same in the improvement of the real estate to him hereinabove devised, in such manner as he may think fit.

84 My service of plate, above mentioned, I give to be used by my son, William B. Astor, for life; and after his death, to such of his sons as he may appoint.

Will of William B. Astor, Second Clause.

Second: Whereas, under the tenth clause of article of the will of my father, John Jacob Astor, deceased, bearing date the fourth day of July, eighteen hundred thirty-six, he hath authorized me to appoint the residuary real estate given to me for life, to and amongst my children and their issue, in such shares, for such estates, and on such conditions as I might think fit, by deed or will. And whereas, under the tenth clause of the codicil dated the nineteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, annexed to the said will, my father gave to me absolutely one-half of his residuary personal estate and the income of the other half until I should think fit to extend it in the improvement of his residuary real estate, and the balance thereof, unexpended at my death, he gave to my children, or to such of them, and in such manner and proportions as I might appoint by will. And whereas, by another codicil, dated the twenty-second day of December, in the year eighteen hundred and forty-three, my said father left it discretionary with me to appoint certain portions to my daughters,

which were by the said tenth clause of his will charged on the residuary estate given to me for life, and declared that unless I chose to appoint such portions, they should not be charged on such estate; as by reference to the said will and codicils will fully appear. Now, I hereby declare, that in the following clauses of this my will, I intend to execute the said powers of appointment given to me as aforesaid by my father. And I do further declare that all the
85 devises and gifts hereinafter made of my own estate to my children and their issue, or to any of them, are upon the direct understanding and condition that they shall respectively acquiesce in this execution of the said powers; and also, inasmuch as the administration of my father's estate has embraced a large amount of property and a great number of transactions, and I intend that all which has been done in such administration shall be acquiesced in and confirmed by my children and their issue; and I do further declare all such devises, legacies and gifts to be upon the further direct understanding and condition that my children and issue shall respectively acquiesce in such administration up to and until my decease; and in case of any violation of these conditions in whole or in part by any of my children or issue, the devises or gifts to the persons so violating shall be void, and the property disposed of by such devises and gifts shall go to my children and issue not violating the same, as an increase and augmentation of the devises and gifts to them ratably, according to the amounts thereof.

And I further appoint, choose and declare my will to be, that the portions for my daughters, or either of them, shall not be charged on the residuary estate of my father; and in lieu thereof, I have appointed and given to them what is hereinafter expressed.

William B. Astor, Fifth Clause.

Fifth: Inasmuch as on the marriage of my daughter Laura with Franklin H. Delano, Esquire, a settlement of property to the amount of two hundred thousand dollars to her use was made (bearing date in September of the year eighteen hundred and forty-four) with benefits to the expected issue of her said marriage, by my father
86 and myself; one hundred thousand dollars of which was part of the New York City stock aforesaid, and fifty thousand dollars of which came from my father directly; I do, therefore, in exercise of the said power of appointment under my father's will, give and appoint to her out of the residuary estate of my father so much property as in value shall amount to two hundred thousand dollars in addition to what is above mentioned, the same to be selected to the extent of one-third as nearly as may be from unimproved real estate, and the residue from improved real estate, and to be valued and set apart by appropriate deeds as is hereinbefore directed in respect of the similar provision for my daughter Alida; to have and to hold the said lands and real estate to the said Laura for her life, without impeaching of waste, to her separate use, exclusive of the rights of her husband, present or future, in or to the same.

And whereas, in the above mentioned settlement for my daughter

Laura was included certain land called the Cozine Farm of my own individual property which I require to be valued at fifty thousand dollars; *and whereas,* I have also advanced for the purchase of a house on Lafayette Place and the furnishing thereof thirty thousand dollars; and I furthermore advance in September of the year eighteen hundred and forty-nine, ten thousand dollars toward completing a house at Red Hook, in Dutchess County, built by Mr. Delano, and also the further sum of fifty thousand dollars, Ohio State debt (to James Gallatin and John J. Astor, my son, in trust for her), which advancements out of my own estate amount to one hundred and forty-thousand dollars. Now I do further give, devise and bequeath the further sum of two hundred and ten thousand dollars from my individual property to my executors during the life of my
87 daughter Laura, in trust, to keep the same invested and to receive the income thereof, and after defraying taxes and all charges upon or in respect of the same, to apply the net income to the use of my daughter, free from all disposition, debts, control or management of her present or any future husband. On her death, if she, Laura, shall leave issue surviving her, I appoint, devise and give as well the said real estate from my father as the capital sum last mentioned to her issue surviving her *per stirpes;* but if she shall leave no issue surviving her, I give the same to her brothers, John and William and her sister Alida; or if any of them be deceased, without issue surviving Laura, to the survivors or survivor of them. If any of them be deceased, leaving issue surviving her, then the issue shall take what their parent if surviving her would have taken. But if any person, taking as issue under this article of my will any part of my own or of my father's residuary estate, shall die under the age of twenty-one years, without issue surviving him or her, the share or part it would have taken I give to its brothers and sister; but if there be no brother or sister, or he, she or they or any of them should die under the age of twenty-one years, without surviving issue, then I give its share to the said John, William and Alida, and the survivors or survivor of them, and the issue of any of them deceased, in like manner as in this clause above expressed. And I give to Laura power to give the property, the income of which for her life appertains to her, or is to be applied to her use by this will, to and among her issue, brothers, sister, Margaret A. Ward, or to any of them, or to their issue or any of them, in such sums, proportions and shares, and for such estates and on such conditions and limitations as she may think fit, by instrument in nature of a will, and also to secure to her husband an annual income of not exceeding five
88 thousand dollars per annum.

This property is disposed of by the first clause of the will of Laura A. Delano.

By the second clause of the will of William B. Astor, he devised to his daughter Laura Astor Delano the property 190 Madison Avenue, together with the stable attached giving her power of appointment. The property so devised and subject to such power is the lot and building 190 Madison Avenue, and the lot and stable 15 East

Thirty-fourth Street. This passes under the first paragraph of Mrs. Delano's will.

I produce a copy of the second clause of the fifth codicil of the will of William B. Astor.

Said clause is as follows:

William B. Astor, Fifth Codicil, Second Clause.

Second. I give and devise to my daughter, Laura, wife of Franklin H. Delano, Esquire, a piece of land on the westerly side of Madison Avenue, next north of the lot, in this codicil given to my daughter Alida, commencing thirty-seven feet and three-eighths of an inch northerly from the corner of Thirty-fourth Street running in front along Madison Avenue thirty-seven feet and three-eighths of an inch, and of that width, ninety-five feet westerly; also a lot of land on the northerly side of Thirty-fourth Street, next west of a lot in this codicil given to my daughter Alida, running twenty-five westerly along the northerly side of Thirty-fourth Street and of that width, seventy-four feet and three-fourths of an inch in depth; and also a piece or strip of land, four feet and three-eighths of an inch in width, lying northerly in the rear of the lot in this codicil given to my
89 daughter Alida, and extending so as to connect the lot on Madison Avenue and the lot on Thirty-fourth Street herein given to my daughter Laura; to have and to hold the said lots and pieces of land to my said daughter Laura for and during her natural life and as her separate estate, without impeachment of or for any manner of waste; and with all and singular, the powers, privileges, advantages, benefits and conditions expressed in the seventh and twelfth articles of my will, and as if the devise of this present land had been orignally contained in the fifth article of my said will; and, subject to this devise for life to my said daughter Laura, I give and devise the future estate in this land in the same manner and to the same persons and on the same conditions, and with the same powers, as in my said will are applied to the lands given to my said daughter Laura, in and by the said fifth article or by the force and effect thereof.

The lands particularly devised by this codicil are comprised in five lots on a map of my estate, designated by numbers eighty-eight, eighty-nine, ninety, ninety-one and ninety-two.

By the fifth clause of the will of William B. Astor, the testator gave the sum of $210,000 from his individual property to his executors during the life of his daughter, Laura Astor Delano. The present trustees of this trust are the New York Life Insurance & Trust Company, Mr. Edmund L. Baylies and myself. The trust was for the benefit of Mrs. Delano during her life, and she had the power of appointment with respect to the principal; and in this case, as well as in each of the other cases above mentioned, the power of appointment was limited to certain class of persons, and there was a remainder in default of appointment. The property included in this trust at the time of Mrs. Delano's death is as follows:

90 382 Broadway and 331 West 14th Street; also personal property as follows:

$15,000, New York City, 3½%, consolidated gold stock, due October 1st, 1915, coupon.

$49,700, New York City, 3½% gold, corporate, registered stock, due October 1st, 1918.

Bond and mortgage of Redmond Forrestal	$6,000.00
Bond and mortgage of John L. Logan	12,000.00
Bond and mortgage of Mary L. Cormack	12,000.00
Bond and mortgage of Mary L. Cormack	22,000.00
Bond and mortgage of Jules Vatable	12,000.00
Bond and mortgage of Jules Vatable	3,000.00
Bond and mortgage of William H. Post	12,000.00
Cash uninvested	13,670.76

I produce a copy of a deed made by William B. Astor to Laura A. Delano, dated September 30, 1848.

The deed was offered in evidence by Mr. Judd, on behalf of the State Comptroller; received and marked Exhibit A of this date.

The real property described in this deed is now known as 45 Lafayette Place.

I produce a deed dated September 6th, 1849, made by William B. Astor to James Gallatin and John Jacob Astor, Jr., as trustees.

The deed was offered in evidence by Mr. Judd; received and marked Exhibit B of this date.

Mr. Lucius H. Beers and I were trustees under this deed of trust at the time of Mrs. Delano's death. The property then held by the trustees was as follows:

Bond of Jacob Lissner secured by mortgage on premises 722 Columbus Avenue	$15,000.00
Bond of Sarah J. O'Neill, secured by mortgage on premises 67 Irving Place	15,000.00
91 Bond of Harris D. Colt, secured by mortgage on premises on East 61st Street	20,000.00

I produce deed made by John Jacob Astor and William B. Astor and wife to Laura Astor and to James Gallatin and John Jacob Astor, the younger, as trustees, dated September 10, 1844.

The deed was offered in evidence by Mr. Judd; received and marked Exhibit C of this date.

The trustees under this deed at the time of Mrs. Delano's death were Lucius H. Beers and I. The personal property held by the trustees at that time was as follows:

Bond of M. S. Bartlett secured by mortgage on premises 497 Third Avenue	$12,000.00
Bond of Richard Irvin secured by mortgage on premises 12 West 36th Street	40,000.00
Bond of P. A. Gribet	12,500.00
Bond of Herman Queller	20,000.00

Bond of Annie N. Harris	14,500.00
Bond of Joseph A. Keogh	3,000.00
Bond of Cornelia K. Averill	40,000.00
Uninvested cash	1,169.46

The following real estate was also included in this deed of trust:

Cozine Farm.

Block 1045.

911 Eighth Avenue, 303 West 54th Street, 913 Eighth Avenue,	Subject to lease		$55,000.00
915 Eighth Avenue, 919 do. 305 West 54th Street,	Subject to lease		60,000.00
921 Eighth Avenue, 923 do.	Subject to lease		45,000.00
925 do. 927 do. 302 West 55th Street,	Subject to lease		60,000.00
92			
307 West 54th Street,	Subject to lease		8,000.00
304 West 55th Street,	do.		8,000.00
306 do.	do.		8,000.00
308 do.	do.		8,000.00
310 do.	do.		8,000.00
312 do.	do.		8,000.00
314 do.	do.		8,000.00
316 do.	do.		8,000.00
318 do.	do.		8,000.00
320 do.	do.		8,000.00
322 do.	do.		8,000.00
324 do.	do.		8,000.00
326 do.	do.		8,000.00
328 do.	do.		8,000.00
330 do.	do.		9,500.00
332 do.	do.		9,500.00
334 do.	do.		9,500.00
336 do.	do.		9,500.00
338 do.	do.		9,500.00
340 do.	do.		9,500.00
342 do.	do.		9,500.00
344 do.	do.		9,500.00
346 do.	do.		9,500.00
348 do.	do.		9,500.00
350 do.	do.		9,500.00
352 do.	do.		9,500.00
354 do.	do.		9,500.00
356 do.	do.		9,500.00

358	do.	do.	.....	9,500.00
360	do.	do.	.....	9,500.00
362	do.	do.	.....	9,500.00
364	do.	do.	.....	9,500.00
366	do.	do.	.....	9,500.00
368	do.	do.	.....	6,500.00
370	do.	do.	.....	6,500.00
372	do.	do.	.....	6,500.00
321	West 54th Street,			
323	do.			
325	do.			
327	do.	12 Vacant lots	.....	120,000.00
327 adj.	do.			
339–351	do.			
830	Ninth Avenue, Subject to lease		.....	12,000.00
832	do.	do.	.....	12,000.00
834	do.	do.	.....	5,000.00
836	do.	do.	.....	5,000.00
838	do.	do.	.....	5,000.00
840	do.	do.	.....	7,000.00

93 Block 1046.

329	West 56th Street, Subject to lease		.....	8,000.00
331	do.	do.	.....	8,000.00
333	do.	do.	.....	8,000.00
347	do.	do.	.....	9,500.00
349	do.	do.	.....	9,500.00
351	do.	do.	.....	9,500.00
353	do.	do.	.....	9,500.00
355	do.	do.	.....	9,500.00
357	do.	do.	.....	9,500.00
359	do.	do.	.....	9,500.00
361	do.	do.	.....	9,500.00
363	do.	do.	.....	9,500.00
365	do.	do.	.....	9,500.00
842, 844, 846, 848, 850	Ninth Avenue plot,	do.	.....	50,000.00
375, 371, 373	West 55th Street,			

Block 1064.

831	Ninth Avenue, Subject to lease		.....	7,500.00
833	do.	do.	.....	7,500.00
835	do.	do.	.....	7,500.00
837	do.	do.	.....	7,500.00
839	do.	do.	.....	9,500.00

402	West 55th Street,	do.	.....	7,500.00
404	do.	do.	.....	8,500.00
406	do.	do.	.....	8,500.00
408	do.	do.	.....	4,500.00
410	do.	do.	.....	4,500.00
412	do.	do.	.....	6,000.00
414	do.	do.	.....	6,000.00
416	do.	do.	.....	5,500.00
418	do.	do.	.....	5,400.00
420	do.	do.	.....	5,200.00
430–442	do.	plot 6½ lots, vacant	.....	45,500.00
452	West 55th Street.	Subject to lease	.....	7,000.00
454	do.	do.	.....	7,000.00
456	do.	do.	.....	7,000.00
828	Tenth Avenue, with old building,	subject to lease	..	7,000.00

94 Block 1065.

841	Ninth Avenue,	Subject to lease	.....	9,000.00
843	do.	do.	.....	7,000.00
845	do.	do.	.....	7,000.00
849 851	do.	do.	.....	25,000.00
403	West 55th Street,	Subject to lease	.....	4,000.00
405	do.	do.	.....	3,800.00
407	do.	do.	.....	6,000.00
409	do.	vacant lot	.....	6,000.00
411	do.	Subject to lease	.....	10,500.00
413	do.	do.	.....	7,650.00
415	do.	do.	.....	7,650.00
417	do.	do.	.....	7,500.00
419	do.	do.	.....	7,500.00
421	do.	do.	.....	7,000.00
421A	do.	do.	.....	500.00
423	do.	do.	.....	7,000.00
423A	do.	do.	.....	525.00
425	do.	do.	.....	7,000.00
425A	do.	do.	.....	550.00
427	do.	do.	.....	7,000.00
427A	do.	do.	.....	575.00
429	do.	do.	.....	7,000.00
431	do.	do.	.....	7,000.00
433	do.	do.	.....	7,000.00
435	do.	do.	.....	7,000.00
437	do.	do.	.....	7,000.00
439	do.	do.	.....	7,000.00
441	do.	do.	.....	7,000.00
443	do.	do.	.....	7,000.00
445	do.	do.	.....	7,000.00
447	do.	do.	.....	7,000.00
449	do.	do.	.....	7,000.00
451	do.	do.	.....	7,000.00
453	do.	do.	.....	7,000.00

834–840 Tenth Avenue, with old buildings		45,000.00
842–848 Plot Tenth Avenue, old buildings		30,000.00
434 West 56th Street, old buildings		7,000.00
436 West 56th Street, vacant lot		7,000.00
438 do.	do.	7,000.00
440 do.	with old building	7,000.00
446 do.	vacant lot	5,000.00
450 do.	do.	7,000.00
95	Block 1084.	
831 Tenth Avenue,	Subject to lease	12,000.00
833 do.	do.	8,500.00
835 do.	do.	8,500.00
837 do.	do.	8,500.00
839 do.	do.	8,500.00
841 do.	do.	8,500.00
843 do.	do.	8,500.00
845 do.	do.	8,500.00
847 do.	do.	8,500.00
849 do.	do.	12,000.00
503 West 55th Street,	do.	5,000.00
505–507 do.	do.	12,000.00
509 do.	do.	6,000.00
511 do.	do.	6,000.00
513 do.	do.	6,000.00
515 do.	with old building	5,000.00
517 do.	do.	5,000.00
519 West 55th Street,	Subject to lease	5,000.00
521 do. 523 do. 525 do.	3 vacant lots	15,000.00
527 do. 529 do. 531 do.	Subject to lease	15,000.00
533 do. 535 do.	do.	9,000.00
537 do. 539 do.	do.	9,000.00
541 do.	Vacant	4,500.00
543 do.	do.	4,500.00
792 794 796 798	Eleventh Avenue plot, about 3½ vacant lots	22,000.00
800 Eleventh Avenue,	Subject to lease	6,250.00
802–804 do.	do.	14,000.00
545 West 55th Street, 547 do. 549 do. 551 do. 546 West 56th Street, 548 do. 550 do.	do.	35,000.00

544	do.	vacant	4,500.00
542	do.	do.	4,500.00
540	do.	do.	4,500.00
538	do.	Subject to lease	4,500.00
96			
536	West 56th Street,	Subject to lease	4,500.00
534	do.	do.	4,500.00
532	West 56th Street,	vacant	4,500.00
530	do.	do.	4,500.00
528	do.	Subject to lease	5,000.00
526	do.	vacant	5,000.00
524	do.	do.	5,000.00
522	do.	do.	5,000.00
520	do.	do.	5,000.00
518	do.	do.	5,000.00
516	do.	do.	5,000.00
514	do.	do.	5,000.00
512	do.	Subject to lease	6,000.00
510	do.	do.	6,000.00
508	do.	vacant	6,000.00
506	do.	do.	6,000.00
504	do.	Subject to lease	6,500.00
502	do.	do.	5,000.00

Block 1805.

806	Eleventh Avenue, with gore, subject to lease	$9,000.00

Block 1103.

793	Eleventh Avenue, with gore,	vacant	10,000.00
795	do.	Subject to lease	6,000.00

Mr. William B. Astor, after the execution and delivery of the deed of September 10th, 1844, acquired certain parcels of real property of irregular shape adjoining the Cozine Farm. By the fourth clause of the third codicil to his will he devised these parcels. I produce a copy of the fourth clause of the third codicil of the will of William B. Astor:

William B. Astor, Third Codicil, Fourth Clause.

Fourth. Having acquired certain gores or pieces of land adjoining to the lands forming part of the Cozine Farm, and adjoining the lands embraced in the settlement deed for my daughter Laura Delano, now, I devise and give all such gores and pieces of
97 land to be held by the same persons, and on the same limitations, and with the same powers, and on the same trusts and conditions as are or shall be applicable to the said adjoining lands, and the same are hereby given and devised as part thereof.

The gores referred to in this schedule are as follows: A piece of land on the northerly side of Fifty-fourth Street commencing 350 feet east of Ninth Avenue, having a frontage of 125 feet on Fifty-fourth Street, and a depth of 34 feet 4¾ inches on the westerly side and 18 feet 9⅞ inches on the easterly side. Also another piece on the southwesterly corner of Tenth Avenue and Fifty-sixth Street, having a frontage of 3 feet 6½ inches on Tenth Avenue and 29 feet 5½ inches on Fifty-sixth Street.

I produce a deed made by William B. Astor to John Jacob Astor, Jr., William Astor and George De Forrest Lord and Laura A. Delano, dated October 28, 1865.

Said deed was offered in evidence by Mr. Judd; received and marked Exhibit D of this date.

Mr. Beers and I have been substituted as trustees under this deed, and were such trustees at the time of Mrs. Delano's death. The property held by the trustees at the time of Mrs. Delano's death is as follows:

Bond and mortgage of Joel Hyams	$55,000.00
Bond and mortgage of Jonas Weil	30,000.00
Bond and mortgage of Joseph A. Kehoe	11,000.00
Bond and mortgage of J. A. Townsend, Jr.	17,000.00
Bond and mortgage of Henry W. Schmidt	17,000.00
Bond and mortgage of Frederick Meyer	18,000.00
Bond and mortgage of Dometille Denison	10,000.00
Uninvested cash	27,746.24

98 and the real estate 57 East One Hundred and Twentieth Street, bought in by the trustees under foreclosure.

I produce a copy of the paper referred to by Mrs. Delano in her will as the special will and codicils referred to in the seventh article of the ninth codicil to "the will of my said father."

Said special will was offered in evidence by Mr. Judd; received and marked Exhibit E of this date.

Robert E. Gillespie-Stainton, Mr. Beers and I are, and at the time of Mrs. Delano's death were, the trustees under this special will. The property held by the trustees consists of about twenty-six thousand pounds sterling in British Consols in the physical possession of Mr. Gillespie-Stainton, of London, England.

By Mr. JUDD:

Q. They were in his possession in London at the time of the death of Mrs. Delano?

A. Yes.

Mr. BEERS: I move to strike out so much of Mr. Lord's answer to the preceding question as relates to appointments made under powers created by the deeds of September 10th, 1844, of 1848, of 1849 and of 1865, on the grounds that the interest and title of the appointees under Mr. Delano's will was acquired by them under deeds made respectively in the years 1844, 1849, 1848 and 1865.

Mr. JUDD: I simply state that this is covered by the decision above mentioned.

Mr. MAZET: As I understand the decision of the Court in the matter of Delano, the power to tax does not relate to the original instrument or the character of the instrument, but to the power of appointment exercised by her will, this being a tax not on the
99 property itself, but on the right of succession as created by the exercise of such power under the will of this decedent. Under that decision I shall have to overrule your objection.

Exception.

By Mr. BEERS:

Q. Had the securities held under the provisions of the special English will of Mr. William B. Astor ever been in the United States?

A. They had not since the appointment of Mr. Beers and myself on the 20th day of December, 1901, to my own knowledge. Before that time, I think, the trustees were all residents of Great Britain.

By Mr. JUDD:

Q. Do you know whether or not any of the property under that special will of William B. Astor was ever in the United States—was it immediately put into these British Consols?

A. It was in British Consols. The special will contained specific legacies of British Consols belonging to Mr. William B. Astor at the time of his death.

Q. And you understand these are the same British Consols?

A. Those are the same British Consols which were held by the trustees at the date of Mrs. Delano's death.

The accrued interest on the mortgages held by the trustees under the deed of September 10, 1844, at the time of Mrs. Delano's death amounted to $2,720.20. The accrued interest on the securities held under the deed of 1849 to June 15, 1902, amounted to $884.12. The accrued interest on the securities held under the deed of 1865 to June 15, 1902, amounted to $2,153.73.

Q. I notice by the codicil to the will, made April 8, 1901, that two persons whose residence is given as New York City were witnesses. Do you know whether or not that codicil was executed in New York?

A. It was executed abroad, but I suggested to Mrs. Delano
100 to have the codicil witnessed by New Yorkers so that it might be more easily proven.

Q. As I understand it, the will and codicil were proved as a foreign will, were they not, in the Surrogates' office in this county?

A. Yes, jurisdiction depending upon there being assets here.

The Comptroller produces and offers in evidence an affidavit of Alfred E. Marling, showing the valuations of the real property over which Laura Astor Delano exercised the powers of appointment created by the trust deeds of 1844, the deed of 1848 and the deed of 1865.

Said affidavit was received and marked Exhibit F of this date.

Mr. BEERS: All of the parties appearing object on the same grounds as the objection made to the testimony of Mr. Franklin B. Lord; and on the further ground that the interest and title of the appointees under the will of Laura Astor Delano was acquired under deeds made in 1844, 1848 and 1865.

Objection overruled; exception.

WINTHROP ASTOR CHANLER, is called by Mr. Beers to testify as to the family history of Laura Astor Delano and of other descendants of William B. Astor.

Mr. JUDD: I object to the introduction of any testimony under this head, except for the purpose of showing the relationship that exists between the donee of the power and the beneficiaries under the power.

Objection overruled.

Hearing adjourned to December 3, 1903, at 4 o'clock P. M.

101 Hearing continued December 3rd, 1903, 4 P. M.

Appearances: Same as before.

WINTHROP ASTOR CHANLER, called as a witness, being sworn, testified as follows:

Examined by Mr. BEERS:

Q. You are a son of Mrs. Margaret Astor Chanler, and great grandson of Mr. William B. Astor, are you not?

A. Yes, sir.

Q. Are you familiar with the family history of Mr. William B. Astor and his direct descendants?

A. I am.

Q. Please state the names of all of the children whom Mr. William B. Astor had.

Mr. JUDD: I object to the question as immaterial, irrelevant and incompetent, except in so far as it tends to show the relationship that existed between the donee of the power under William B. Astor's will and the deeds of trust and the beneficiaries under those powers. As I understand it, under the decision of the Appellate Division in the matter of Seaver and the Court of Appeals in the matter of Dows, that is the only relationship on which the tax is based.

Mr. MAZET: I will allow the testimony for what it is worth.

Exception.

A. John Jacob, Emily, William, Alida, Laura and Henry; the latter is still living.

Q. That is, Mr. Henry Astor is now living?

A. Yes.

Q. Miss Laura Astor was afterwards Mrs. Delano, whose will has been introduced in this proceeding?

A. Yes.

Q. Is Mr. William Astor, the son of Mr. William B. Astor, living?
A. No.
102 Q. When did he die?
A. April 25, 1892.
Q. Please state the names of all of the children of Mr. William Astor—that is, the son of Mr. William B. Astor?
A. Emily, Augusta, Helen, Caroline and John Jacob.
Q. By Augusta you refer, do you not, to Charlotte Augusta Astor, who is now Mrs. Charlotte Augusta Haig?
A. I do.
Q. Miss Emily Astor was afterwards Mrs. Van Allen, was she not?
A. Yes.
Q. Miss Helen Astor was afterwards Mrs. Roosevelt?
A. Yes.
Q. Mrs. Caroline Astor is now Mrs. Wilson?
A. Yes.
Q. Have any of the children of Mr. William Astor, the son of Mr. William B. Astor, died?
A. Yes; Mrs. Van Allen and Mrs. Roosevelt.
Q. When did Mrs. Emily Van Allen die?
A. She died fully 25 years ago.
Q. That is, she died before Mrs. Delano?
A. Yes, many years before.
Q. Please state the names of all the children whom Mrs. Emily Van Allen had?
A. James Laurens, Sarah Stewart and Mary.
Q. And Sarah Stewart Van Allen is now Mrs. Collier, is she not?
A. Yes.
Q. Are all three of these children of Mrs. Van Allen now living?
A. Yes.
Q. And these are the only children Mrs. Van Allen ever had?
A. All to my knowledge, yes, sir.
Q. When did Mrs. Helen Astor Roosevelt die?
A. I couldn't give you the date.
Q. Did she die before June 15, 1902?
A. Yes.
Q. Please state the names of all the children whom Mrs. Helen Astor Roosevelt had?
A. James Roosevelt, Jr., and Helen Rebecca.
Q. Are both of these children now living?
A. Yes.
Q. Is Mr. John Jacob Astor, who was the son of Mr. William B. Astor, now living?
A. No.
Q. When did he die?
A. He died February 22d, 1890.
103 Q. Did he leave any children?
A. One, Mr. William Waldorf Astor.
Q. Is Mr. William Waldorf Astor the only child Mr. John Jacob Astor ever had?
A. Yes, so far as I know.

Q. In speaking of a daughter of Mr. William B. Astor, named Alida, you referred, did you not, to Miss Mary Alida Astor, who was afterward Mrs. Carey?

A. Yes.

Q. Is she now living?

A. No.

Q. When did she die?

A. 1882 or 1883; I am not sure of the exact date—I went to her funeral but I don't remember the date.

Q. Did she leave any children?

A. She did.

Q. Please state their names?

A. Margaret Laura, Arthur Astor and Henry Reginald Astor.

Q. Did Mrs. Mary Alida Carey leave any children or descendants of deceased children other than the three whom you have named?

A. No.

Q. Is Mr. Henry Reginald Astor Carey living?

A. No.

Q. When did he die?

A. In May, 1893.

Q. Was he ever married?

A. Not that I know of.

Q. Miss Margaret Laura Carey was afterward Mrs. Margaret Laura de Stuers, was she not?

A. Yes.

Q. And is now Mrs. Zborowski?

A. Is now Mrs. Zborowski, a widow.

Q. Mr. Arthur Astor Carey and Mrs. Zborowski are now living, are they not?

A. Yes.

Q. Can you state the names of the children of Mrs. Zborowski who were children of her marriage with Mr. de Stuers?

A. John Hubert, Margaret and Hubert.

Q. Miss Emily Astor, the daughter of Mr. William B. Astor, to whom you have referred, was afterward Mrs. Ward, was she not?

A. Yes.

Q. She was afterward your grandmother?

A. She was.

Q. Did she leave any children?

A. She left one—my mother.

104 Q. Did she leave any other children or descendants of deceased children?

A. No.

Q. Your mother was afterward Mrs. John Winthrop Chanler?

A. She was.

Q. Please state the names of all the children of your mother, both those who are now living and those who have died, and in stating the name, please give the date of birth of each.

A. John Armstrong, born October 10, 1862; Winthrop Astor, born October 14, 1863; Emily, born in 1864 and died in 1871; Elizabeth Winthrop, now Mrs. John J. Chapman, born February 23rd, 1866; William Astor, born June 11, 1867; Marion Ward, born

in 1868 and died February 11, 1883; Lewis Stuyvesant, born September 24, 1869; Margaret Livingston, born October 31, 1870; Robert Winthrop, born February 22, 1872; Alida Beekman, now Mrs. C. Temple Emmet, born June 22, 1873; Egerton White, I don't remember when he was born, but he died November 30, 1882.

Q. Your sister Emily was about 7 years old when she died, was she not?

A. Yes.

Q. Your brothers Egerton and Marion were both minors and unmarried?

A. At the time of their death they were.

Q. What was the date of your mother's death?

A. December 12, 1875.

Q. Has your brother, John Armstrong Chanler, any children?

A. No.

Q. You have children, have you not?

A. Yes.

Q. Please give their names and the dates of their birth.

A. Laura Astor, born September 30, 1887; Beatrice Margaret Mary, born August 21, 1891; Hester, born April 25, 1893; Marion Winthrop, born August 24, 1895; May Margaret Gabrielle, born May 20, 1897; Hubert Winthrop, born September 27, 1900; Theodore Ward, born April 29, 1902.

Q. Has your sister, Mrs. Chapman, any children?

A. One.

Q. Please give his name, and the date of his birth, if
105 you know it.

A. His name is Chanler Armstrong, born April 25, 1901.

Q. Has your brother, William Astor Chanler, any children?

A. No.

Q. Has your brother, Lewis Stuyvesant, any children?

A. Three.

Q. Please give their names and the dates of their birth.

A. Lewis Stuyvesant, Jr., born July 3, 1891; Alida, born January 7, 1894; William Astor, second, born July 10, 1895.

Q. Your sister Margaret is unmarried, is she not?

A. Yes.

Q. Has your brother, Robert Winthrop, any children?

A. One, Dorothy, born November 24, 1898.

Q. Has your sister, Mrs. Emmet, any children?

A. Four; Elizabeth Winthrop, born September 8, 1897; Margaret C., born April 10, 1899; Christopher T., born March 18, 1900; Hester Alida, born December 5, 1902.

Q. Can you give the date of death of your grandmother, Mrs. Emily Astor Ward?

A. No, I cannot.

Q. She died more than thirty years ago, did she not?

A. Yes.

Q. Can you state the date of death of your great grandfather, Mr. William B. Astor?

A. November 24, 1875.

Q. And your grandmother, Mrs. Ward, died before her father, Mr. William B. Astor, did she not?

A. Yes.

Q. Did Mr. William Astor, the son of Mr. William B. Astor, leave any children or descendants of deceased children, other than those whose names you have given?

A. No.

Q. Did Mr. John Jacob Astor, the son of Mr. William B. Astor, leave any children or descendants of deceased children other than his son, Mr. William Waldorf Astor, to whom you have referred?

A. No.

Q. Did Mrs. Mary Alida Carey leave any children or descendants of deceased children other than those you have named in your testimony?

A. No.

106 Q. Did Mrs. Emily Ward leave any children or descendants of deceased children other than those you have named?

A. No.

Q. Did Mrs. Laura Astor Delano leave any children?

A. No.

Q. Mrs. Laura Astor Delano was the sister of your grandmother, Mrs. Emily Ward, was she not?

A. Yes.

Q. And Mrs. Delano was the sister, also, of Mrs. Mary Alida Carey, who was the mother of Mrs. Zborowski, and the grandmother of John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers?

A. Yes.

Q. Mr. Arthur Astor Carey is the son of Mrs. Mary Alida Carey, and is a nephew of Mrs. Laura Astor Delano?

A. Yes.

FRANKLIN B. LORD, having been previously sworn, continued his testimony as follows:

By Mr. BEERS:

Q. In response to questions by Mr. Judd yesterday, you testified that you were trustee under a deed made by Mr. William B. Astor, dated September 10, 1844; also under a deed made by Mr. William B. Astor, dated September 6, 1849; also under a deed made by Mr. William B. Astor, dated October 28, 1865; and you stated that certain personal property was held by the trustees under those deeds. Please state whether, in closing out those trusts, the capital of the trust estate is chargeable with any commissions and expenses, and if so, what the amounts of such commissions and expenses are?

A. The property held under the deed of September, 1844, amounting to $143,169.46, is subject to two trustees' commissions, amounting to $3,243.38, and to the expenses of winding up the trust, which I should estimate as about $5,000.

107 The property held under the deed of September 6, 1849, amounting to $50,000, and is subject to one commission to the two trustees, amounting to $690, and to the expenses of closing the trust, which I estimate at $500.

And the property held under the deed of October 28, 1865, amounting to $199,050, is subject to commissions to two trustees, amounting to $4,361, and to the expenses which I estimate at $5,000.

Q. Please state whether Mrs. Delano, at the time of her death, was possessed of any personal property not in the State of New York, and if so, please state of what that personal property consisted, and, if you know, what its value was at the date of her death.

A.—

She owned bonds secured by mortgage on property in this State, amounting in the aggregate to..... the bonds and mortgages being without the State.	$880,500.00
Bonds of railroad corporations incorporated under the laws of other States, of the par value of $133,000, and of the market value at the time of her death, of....	146,015.00
Harlem River & Portchester, 1st mortgage bonds, of the par value of $25,000, and the market value of..	25,750.00
$10,000, Jersey City, 6% water bonds, 1909, market value	11,200.00
$10,000, Jersey City 5% assessment bonds, September, 1923, market value.....	11,800.00
$8,000, New York City, 3% stock, of the market value of	8,000.00
3065 shares, Morris & Essex Railroad Co., of the market value of.....	301,136.25
She also had on deposit with Messrs. Hottienguer & Company, of Paris, cash and securities, which 108 being taken at their market value as fixed for the purposes of determining the transfer tax payable in France, amounted to..... the exchange being taken at $5.21.	239,827.00
The accrued income on Mrs. Delano's estate, including rents of real estate uncollected, and uncollected interest and dividends on stocks, amounted to.... according to an estimate made by my bookkeeper, which I believe to be correct.	35,049.49

Q. Have you computed the commissions and administration expenses chargeable against Mrs. Delano's entire estate?

A. The total personal estate, according to the foregoing estimates, is $1,835,545.45. The real estate belonging to Mrs. Delano individually is valued by Mr. Marling at $580,000. This would make the aggregate amount upon which commissions are to be computed if the real estate is sold, $2,415,545.45; commissions to three executors on this amount would be $73,036.35. In view of the serious questions arising under Mrs. Delano's will, and the number of parties interested therein, I estimate $75,000 as a reasonable allowance for expenses of administration.

By Mr. JUDD:

Q. As I understand it, none of the bonds and mortgages secured upon New York real estate, none of the railroad bonds of companies

incorporated under the laws of other States or under the laws of this State, which you have just enumerated, were located, at the time of Laura Astor Delano's death, within the State of New York?

A. They were not.

Q. Among the property—securities, etc.—which you have testified was on deposit in Paris at the time of Laura Astor Delano's death, were there any stocks of companies incorporated under the laws of the State of New York?

A. There were not; they were all securities of French or European railroads.

109 Q. Did you draw Mrs. Delano's will?

A. I did not; I drew the codicil.

Q. You didn't draw the first will?

A. No.

By Mr. MAZET:

Q. Did you regard Mrs. Delano as a non-resident of the State of New York?

A. Certainly.

Mr. BEERS: The executors of Mrs. Delano offer in evidence the affidavit of Alfred E. Marling, verified December 3rd, 1903, stating his valuation of the real estate of which Mrs. Delano died seized. Exhibit 3 of this date.

Mr. JUDD: I offer in evidence the affidavit of Alfred E. Marling as to the valuation of all the real estate situate in the State of New York pasing under the will of Laura Astor Delano.

Mr. BEERS: I object to the admission of this affidavit on the following grounds:

That Article X of Chapter 908 of the Laws of 1896, and the amendments thereto, entitled "Taxable Transfers," do not confer upon the Surrogates' Court of the County of New York jurisdiction over the property appointed by the will of Mr. Laura Astor Delano for the purpose of assessing the same for a transfer tax.

Second: That Chapter 284 of the Laws of 1897 is unconstitutional and void under Section 24 of Article III of the Constitution of the State of New York, in that it does not distinctly state the tax and object to which it is to be applied.

Third: That Article I of Chapter 908 of the Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appointees under the will of Laura Astor Delano, is unconstitutional and void under Section VI of Article I of the Constitution of the State of New York, which provides that no person

110 shall be deprived of property without due process of law, and private property shall not be taken for public use without just compensation.

Fourth: That Article X of Chapter 908 of the Laws of 1896, and the amendments thereto as applied to the rights and interests of the appointees under the will of Laura Astor Delano, is unconstitutional and void, and that it is repugnant to Section X of Article 1 of the

Constitution of the United States, in that it impairs the obligations of contracts.

Fifth: That Article X of Chapter 908 of the Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appointees under the will of Laura Astor Delano, is unconstitutional and void, being repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it seeks to deprive citizens of property without due process of law, and to deny persons affected thereby equal protection of the laws.

And on the further grounds, that it appears from the testimony that the appointees of property under the will of Mrs. Laura Astor Delano derived their title from deeds made in 1844, 1848, 1849 and 1865, and on the further ground that in respect to the shares which certain of the appointees would take in default of appointment, they acquired such interest directly under the original deeds of 1844, 1848, 1849 and 1865, and not under any instrument exercising the power of appointment.

Objection overruled; exception.

The affidavit of Mr. Marling was received in evidence and marked Exhibit G of this date.

It is hereby stipulated that wherever a question shall arise herein as to the person or persons in whom title to any property is vested under the terms of the will of Laura Astor Delano, the tax on said property may be assessed in the alternative against all the
111 persons who could take the said property under any determination of such question, and the parties herein waive all objection to the method of assessing said tax by reason of the fact that the same is assessed, in the alternative, against more than one person and not assessed absolutely, but all parties hereto reserve the right to claim herein that the property so appointed is not liable to taxation herein, and that, if liable to taxation, it must be taxed on the basis of the relationship of the appointee to the creator of the power of appointment and not on the basis of the relationship of the appointee to said Laura Astor Delano.

Hearing closed.

Affidavit of Franklin B. Lord Annexed to Testimony.

Surrogates' Court, New York County.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

COUNTY OF NEW YORK, *ss:*

FRANKLIN B. LORD, being duly sworn, saith:

On page 4 of the minutes it appears that I testified as follows: "She (Mrs. Delano) had $1,655.76 on deposit in the Union
112 Trust Company in this city." I desire to correct this statement. I have ascertained that at the date of her death Mrs.

Delano's account with the Union Trust Company was overdrawn, but that afterward interest on amounts which she had previously had on deposit with that company was credited to her estate by the Trust Company and that such interest, to the date of her death, amounted to $971.39.

I desire to make the same correction in reply to the question asked me by Mr. Mazet, as appears on the fifth page of the minutes, where this amount of $1,655.76 is again referred to.

On pages 18 to 22 of the minutes a list of the various properties making up the Cozine Farm is given. The valuations which appear in that list opposite the various parcels were made by Mr. Alfred E. Marling for the purpose of this proceeding and as appears by his affidavit to that effect offered in evidence on December 3rd.

On page 18 of the minutes twelve vacant lots, Nos. 321 to 327 and 339 to 351 West Fifty-fourth Street, appear as being value at $120,000, and on page 20 of the minutes the property No. 849 Tenth Avenue appears as being valued at $12,000. In both those cases the property is made up in part of the gores or parcels of irregular shape which were not originally part of the Cozine Farm, and which are separately appraised as the Cozine gores, as will appear by the said affidavit of Alfred E. Marling, and his valuations of said gores should be deducted from the total values as stated in said list.

It appears by page 25 of the minutes that I testified that the accrued interest in the mortgages held under the deed of September 10, 1844, at the time of Mrs. Delano's death amounted to $2,720.20; that the accrued interest to said date on the securities held under the deed of 1849 amounted to $884.12, and that the accrued interest to that date on the securities held under the deed of 1865 amounted to $2,153.73.

113 I desire to add to this amount certain amounts which were received after the date of Mrs. Delano's death a full statement of all of said amounts I give below.

I have computed the commissions and expenses of administration payable on closing the trust created by the fifth clause of the will of William B. Astor and I compute the half commissions to the three trustees on the real and personal estate held by them and amounting to $405,458.88, to be $6,366.87, and I estimate the expenses of administration at $5,000, making the total deductions $11,366.87.

I desire to correct the figures stated by me, as appears by page 34 of the minutes, as follows:

$880,500 should be $890,588.75, and to that item should be added the interest accrued on said mortgages to the date of Mr. Delano's death, which amounts to $7,254.44. The market value of $25,000 Harlem River & Port Chester first mortgage bonds should be stated at $25,000 instead of $25,750. In addition to the amount of the deposit with Hottinguer & Company, Paris, there should be a statement that other cash without the State of New York amounts to $75,897.71 over and above debts.

The item of $35,049.49 stated by me on page 34 of the minutes to be made up of the accrued income on Mrs. Delano's estate, includ-

ing uncollected rents and uncollected interest and dividends, should be analyzed as will appear below.

Upon analysis I find the entire individual personal estate which was within the State of New York at the date of the death of Laura Astor Delano, together with all stocks of New York corpora-
114 tions owned by her at the time of her death to be as follows:

397 shares N. Y. C. & H. R. R. Co. stock par value $100 at 156¼	$62,031.25	
Bond of Julius Israel secured by mortgage on premises No. 143 Delancey St. Int. at 4½% May and Nov. 1	20,000.	
Accrued interest thereon	107.50	
Bond of May L. Berger secured by mortgage on No. 85 Henry St. Int. at 5 % May and Nov. 1	9,000.	
Accrued interest thereon	53.75	
Money on deposit in Union Tr. Co. with interest to June 15, 1902	971.39	
Accrued income to June 15, 1902, on trust created by deed of Sept. 10, 1844	12,818.49	
Accrued income to June 15, 1902, on trust created by deed of Sept. 6, 1849	1,308.57	
Accrued income to June 15, 1902, on trust created by deed of Oct. 28, 1865	4,750.75	
Accrued income to June 15, 1902, on trust created by 5th article of the will of William B. Astor	8,657.54	
		$119,699.24

On examination and analysis I find the value of the property of Laura Astor Delano without this State consisting of bonds secured by mortgages on property in New York State, with the interest thereon, and bonds of railroad and other corporations incorporated under the laws of New York State or of other States (all of
115 said securities being without the State of New York at the time of the death of said Laura Astor Delano), and the amount of the moneys without this State belonging to her at the time of her death to be as follows:

Bonds secured by mortgages on property in this State amounting in the aggregate to	$890,588.75	
Accrued interest thereon	7,354.44	
Bonds of railroad corporations incorporated under the laws of other States of the par value of $133,000, market value of	146,015.	
Harlem R. & Porchester 1st mtge. bonds of the par value of $25,000, market value	25,000.	

$10,000 Jersey City 6% water bonds 1909, market value	11,200.	
$10,000 Jersey City 5% assessment bonds Sept., 1923, market value	11,800.	
$8,000 New York City 3 3/10% stock, market value	8,000.	
3,065 shares Morris & Essex R. Co., market value	301,136.25	
On deposit with Hottinguer & Co., Paris, France, cash and securities	239,827.	
Cash without the State, over and above debts	75,897.71	
		$1,716,819.15

116 By instrument of appointment, dated December 23, 1901, Lucius H. Beers and I were substituted as co-trustees with Robert W. Gillespie-Stainton of the trusts created by the special English will of William B. Astor, which has been offered in evidence in this proceeding.

From documents relating to said will and said trust, it appears that the British Consols which were disposed of by said will were owned by William B. Astor at the time of his death, and that the trust still consists of these original securities; that the special English will of William B. Astor was proved in the Principal Probate Registry in London, England, on May 15, 1876, and that the physical evidence of the ownership of the securities has at all times been kept and now is in England; the said Robert W. Gillespie-Stainton being at present the trustee resident in England. From an account which I have received from him it appears that he has in his possession as such trustee British Consols of the par value of £26,825. 5 sh. 8 d., which sum at $4.86 per pound is the equivalent of $129,398.86.

FRANKLIN B. LORD.

Sworn to before me this 9th day of December, 1903.

ELI G. PARTRIDGE,
Notary Public, New York County.

117 EXHIBIT 1.

The Last Will and Testament of Laura A. Delano.

I, Laura Astor Delano the widow of Franklin H. Delano of Steen Valetje in the Town of Redhook in the County of Duchess and State of New York do make publish acknowledge and declare this as for and to be my last will and testament or instrument of appointment in the nature thereof in writing under my hand and seal in pursuance of the power and authority to me granted and reserved in and by a deed of settlement bearing date the 10th day of September in the year 1844 executed by John J. Astor William B. Astor and Margaret his wife to me the said Laura and to James Gallatin and John J. Astor jr. Trustees; and by virtue and in pursuance of the power and authority granted and reserved in a second deed of settlement bear-

ing date the 30th day of September 1848 exeexecuted by William B. Astor and Margaret his wife to me the said Laura and to James Gallatin and John J. Astor jr Trustees; And by virtue and in pursuance of the power and authority to me granted and reserved in a third deed of settlement bearing date the 6th day of September 1849 executed by William B. Astor to James Gallatin and John J. Astor jr., Trustees: And by virtue and in pursuance of the power and authority to me granted and reserved in a fourth deed of settlement bearing date the 28th day of October 1865 executed by William B. Astor to John Jacob Astor jr, William Astor and George de Forest Lord, Trustees and to me the said Laura; And by virtue and in pursuance of the power and authority to me granted and reserved in the last wills and testaments of my father William B. Astor late of the City of
118 New York, deceased and the several codicils thereto and in pursuance of every other power and authority enabling me so to do in manner and form following; that is to say:

First: I do hereby give, devise bequeath limit and appoint all and singular the sum of one Hundred and Fifty thousand dollars of the debt of the City of New York, commonly called "Water stock," particularly mentioned and described in the first mentioned deed of settlement dated September 10th 1844 or the proceeds thereof; Also all and singular that certain piece of land in the City of New York bounded Easterly by the Eighth Avenue, Northerly by 57th street, Westerly by the Hudson River and Southerly by 54th street particularly mentioned and described in said first mentioned deed of settlement and all gores and lots of land situate in the present Twenty-second Ward of the City of New York and acquired since the date of the said Trust Deed and now held under the provisions thereof and all property real or personal now or hereafter held under the provisions of said first mentioned deed of settlement; Also all and singular One Hundred thousand dollars of the Public Debt of the State of New York and One Hundred thousand dollars of the Public Debt of the state of Ohio particularly mentioned and described in the fourth mentioned deed of settlement dated October 28th 1865 or the proceeds thereof and all property real or personal now or hereafter held under the provisions of said fourth mentioned deed of settlement; Also the lot of land with the dwelling-house thereon known as No. 190 Madison Avenue, New York City with the lot and stable on 34th Street particularly mentioned and described in the second article of the fifth codicil of the will of my said father William B. Astor; Also all property real and personal held for my benefit or in which I have any interest and over which I have any power of appointment or gift under the terms of the will of
119 my said father William B. Astor or any codicils thereto including the special will and codicils therein referred to in the seventh article of the ninth codicil to the will of my said father in manner and form following to wit; One equal undivided sixth portion or share of the said property real and personal held under the provisions of said two deeds of settlement and said wills and codicils I give devise bequeath limit and appoint to John Hubert de Stuers Margaret de Stuers and Hubert de Stuers the children of my niece Margaret L de Stuers, to them their

heirs and assigns in equal shares forever. In case either of the said children should die before I do leaving issue him or her surviving, the share of the child so dying I give, devise bequeath limit and appoint to such issue in equal shares or in default of such issue living at the time of my deceased to the survivors or survivor of said three children and the issue of any deceased child in equal shares *per stirpes*.

The remaining five equal undivided six portions or shares of the said property real and personal held under the provisions of the said two deeds of settlement and said wills and codicils it is my intention to give devise and bequeath limit and appoint to *to* and for the sole use and benefit of the issue of my deceased niece Margaret A. Chanler in equal shares *per stirpes* and it is my will and desire so far as and to the extent that the powers granted and reserved to me by and under said deeds of settlement, wills and codicils will permit, that the shares of each child of my said niece shall be held in trust for the benefit of such child during the full term of his or her life. I accordingly order and direct that said remaining five equal undivided six portions or shares of said property be divided into as many equal portions or shares as there may be at the time of my decease living children of my deceased niece Margaret A. Chanler and issue of a deceased child one share being allotted for each living child and one share for the issue of each deceased child. The shares allotted for the living children of my said niece I give devise, bequeath limit and appoint to The Union Trust Company of New York In Trust nevertheless to take and hold said shares separately; one share during the full term of the natural life of each child and during the life of each such child to invest and keep invested the share allotted and held for his or her account separately and to collect receive and apply the rents income and profits thereof to the use of said child respectively free from interference or control of any person. Upon the death of each of said children the trust created for his or her benefit in his or her portion of said five-Sixths of said property shall terminate and I give devise, bequeath, limit and appoint the principal of the said portion so as above held in trust for his or her benefit with all accumulations thereof to his or her issue in equal shares *per stirpes* or in default of such issue then living, to the then surviving issue of my said niece Margaret A. Chanler in equal shares *per stirpes*. The shares allotted for the issue of any deceased child of my said niece I give devise, bequeath limit and appoint to such issue in equal shares to them their heirs and assigns absolutely and forever. I have intended to make the foregoing provisions of this my Will conformable to law and to thereby exercise to the full extent the powers of appointment vested in me under and by virtue of the provisions reserved and contained in the deeds of settlement above referred to bearing date September 10th 1844 and October 28th 1865 and in the wills and codicils thereto of my said father William B. Astor. In case however any of the foregoing devises bequests legacies, trusts, powers conditions limitations or appointments should for any reason be legally held invalid then it is my will that all of the above provisions which are valid shall stand

and that no invalidity of any other provisions or appointments shall defeat them or render them void. And in case it should be legally held that the foregoing appointment of a portion of the
121 property real and personal under the provisions of said two deeds of settlement and said wills and codicils thereto In Trust for the benefit of the children of my deceased niece Margaret A. Chanler is to any extent invalid then it is my will that to the extent that such appointment is held valid that said appointment shall remain in full force and effect and such portion of said property which is subject to or affected by any such invalidity I give devise, bequeath limit and appoint to said great-nephews and nieces respectively to them their heirs and assigns forever.

Second: I do hereby give devise bequeath limit and appoint to my nephew Arthur Astor Carey all that lot of land and dwelling-house in the Fifteenth (late Ninth) ward of the City of New York on the westerly side of Lafayette Place designated on a certain map of nine lots of land situate in the ninth ward of the City of New York the property of Seth Geer laid out into lots October 14th 1830 by Joseph F. Bridges, City Surveyor and filed in the office of the register of the City of New York by the number "Eight," bounded Easterly in front by the Lafayette Place aforesaid, Southerly by lot known on said map as, number "Seven," Westerly in the rear in part by land late of John Jacob Astor and in part by land late of John Mason, deceased and Northerly by lot known on said map as number "Nine" which said lot number "Eight" contains in breadth in front and rear twenty-seven feet and in length on each side One hundred and thirty-seven feet six inches more or less and is particularly mentioned and described in the second mentioned deed of settlement bearing date September 30th 1848 To Have and To Hold to my said nephew Arthur Astor Carey and to his heirs and assigns forever.

I also give devise bequeath limit and appoint to my said nephew Arthur Astor Carey Fifty thousand dollars of the Public Debt of the state of Ohio or the proceeds thereof particularly mentioned and described in the third mentioned deed of settlement bearing
122 date September 6th 1849 To Have and To Hold to my said nephew Arthur Astor Carey and to his heirs and assigns forever. In case my said nephew Arthur Astor Carey should die before I do I give devise bequeath limit and appoint said lot of land and dwelling-house situate on Lafayette Place in the City of New York and said sum of Fifty Thousand dollars of the Public Debt of the state of Ohio or the proceeds thereof and all property real and personal held under the provisions of said deeds of settlement respectively dated September 30th 1848 and September 6th 1849 and over which I have any power of appointment to the issue of my said nephew Arthur Astor Carey in equal shares *per stirpes.*

Third: I give and bequeath to Laura A. Chanler the daughter of my great-nephew Winthrop Chanler the sum of Ten Thousand dollars.

Fourth: It is my intention to dispose of my property and estate situate at Monte Carlo in the principality of Monaco by a separate will and I have already made and executed such a will. It is my

will that such separate will or any separate will which I may hereafter make and execute disposing of said property and estate shall be taken and read as part and portion of this will.

All the rest, residue and remainder of my estate real and personal wheresoever and whatsoever I give, devise and bequeath as follows: One-sixth thereof to John Hubert de Stuers Margaret de Stuers and Hubert de Stuers children of my niece Margaret L. de Stuers to them, their heirs and assigns in equal shares forever. In case either of said children should die before I do leaving issue him or her surviving the share of the child so dying I give devise and bequeath in equal shares to such issue or in default of such issue living at the time of my decease to the survivors or survivor of said three
123 children and the issue of any deceased child in equal shares *per stirpes.*

The remaining five-sixths of my said residuary estate I will and direct shall be divided by my Executors into as many equal portions or shares as there may be at the time of my decease living children of my deceased niece Margaret A. Chandler and issue of a deceased child, One share being allotted for each living child and one share for the issue of each deceased child. The shares allotted for the living children of my said niece I give devise and bequeath to the Union Trust Company of New York In Trust never-the-less to take and to hold said shares separately, one share during the full term of the natural life of each child and during the life of each such child to invest and keep invested the share allotted and held for his or her account separately and to collect receive and apply the rents, income and profits thereof to the use of said child respectively free from the interference or control of any person. Upon the death of each of said children the Trust created for his or her benefit in his or her portion of said five-sixth- of my said residuary estate shall terminate and I give devise and bequeath the principal of the said portion so as above held in trust for his or her benefit with all accumulations thereof to his or her issue in equal shares *per stirpes* or in default of such issue then living to the then surviving issue of my said niece Margaret A. Chandler in equal shares *per stirpes.*

The shares allotted for the issue of any deceased child of my said niece I give devise and bequeath to such issue in equal shares, to them their heirs and assigns absolutely and forever. In case the devise bequest and appointment contained in the second paragraph of the first clause of my will of one-sixth of the property therein referred to to John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers and the above devise and bequest of one sixth of my residuary estate to them should fail owing to the death of all of said
124 legatees and their issue before me I then in that event give, devise bequeath limit and appoint the said one-sixth of said property real and personal in said first clause of this my Will referred to and the said One-sixth of my said residuary estate to my nephew Arthur Astor Carey or in case of his death before me to his issue in equal shares *per stirpes.*

I nominate and appoint Alphonse de Stuers the guardian of the estates of his children John Hubert de Stuers Margaret de Stuers and Hubert de Stuers during their respective minorities.

I nominate and appoint as Executors of this my Will my nephew Warren Delano jr, my nephew John Jacob Astor and my friend Franklin B. Lord.

In order to carry out any of the provisions of this my Will and in pursuance of the power to me given in and by the Trust Deeds or Deeds of Settlement, wills and codicils in this my Will referred to and every other power and authority enabling me so to do I authorize and empower my said Executors to consent to and make partition of the real estate and premises mentioned and described in the first mentioned deed of settlement and of the said gores and lots acquired since the date of said Trust Deeds and held under the provisions thereof and of any and all real estate held under the provisions of any of said deeds of settlement wills or codicils among the several devisees in whom the title thereto may vest by virtue of this instrument and for that purpose all necessary deeds and conveyances to make, execute and deliver.

In order to carry out any of the provisions of this my Will I give and grant to my said Executors full power and authority to sell either at public or private sale any or all of the real estate of which I may die seized and all necessary deeds and conveyances thereof to make execute and deliver.

I authorize and empower the Trustee of the Trusts created by this my Will to take receive and hold as permanent investments of
125 the Trusts herein created any of the securities of which I may die possessed and with the consent in writing of the respective *cestui que trust* to invest any funds remaining un-invested at any time in similar or any other securities way or form.

In Witness Whereof I have hereunto set my hand and affixed my seal at Geneva Switzerland where I am at present sojourning this Eighteenth day of October in the year of Our Lord One Thousand and Nine Hundred.

LAURA ASTOR DELANO. [SEAL.]

Signed sealed published and declared by the said testatrix as and for her last will and testament in our presence, who at her request, and in her presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses this 18th day of October A. D. 1900:

HAMILTON FISH,
Of the Town of Philipstown Putnam Co. New York State.
BENJAMIN H. RIDGELY,
Consul of the United States Malaga, Spain.
THURLOW G. PATTEISON,
Geneva Switzerland 2 Quai des Eaux-Vives.

Codicil.

I, Laura Astor Delano, widow of Franklin H. Delano, of Steen Valetie, in the town of Red Hook, County of Dutchess and State of New York, do make, publish and declare these presents as and for a Codicil to my last Will and Testament, bearing date the Eighteenth day of October, 1900.

126 *First.* Whereas by the first Clause of my said Will I do give, devise, bequeath, limit and appoint certain real and personal property therein mentioned, and which I am entitled to dispose of under and by virtue of the powers granted and reserved in certain deeds therein referred to and the Will of my father, William B. Astor, in manner following, to wit:

One equal undivided sixth portion thereof to John Hubert de Stuers, Margaret de Stuers and Hubert de Stuers, the children of my niece Margaret de Stuers, and to such of them as shall survive me, and the issue of any who shall have died before me, and the remaining five sixths to the issue of my deceased niece Margaret A. Chanler, or in trust for their benefit; and by the Fourth Clause of my said Will I give my residuary estate to the same persons in the same shares and estates.

Now therefore in order to avoid any doubt as—the intention of such provisions I direct that in case the power granted and reserved to me, by any of the said deeds, or, the said Will does not authorize an appointment of the property to which such power refers to, any one or more of such legatees, devisees or appointees, there shall be set apart to him or her out of the property which I am authorized to appoint to him or her, or if necessary out of my residuary estate, property of sufficient value to make up his or, her share to the full value of the share given or appointed or intended to be given or appointed to him or her out of all the property disposed of, or, which I intend to dispose of by the First and Fourth clauses of my said Will, and that the shares of the other legatees, devisees or appointees shall be made up, out of the residue of such property including my residuary estate.

I do further direct that in case the trusts which I desire to have established for the benefit of the issue of my deceased niece, Margaret A. Chandler shall be invalid in respect to any of the property over which I have a power of disposition under any of said
127 deeds, there shall be set apart in the establishment of said trusts out of any property covered by any other of said deeds or out of my residuary estate property of sufficient value to make up the full value of the share given or appointed or intended to be given or appointed in trust for such issue out of all the property disposed of, or, which I intend to dispose of, by the said First and Fourth Clauses of my said Will; it being my intention to give and appoint to the said John Hubert de Stuers, Margaret de Steurs and Hubert de Steurs one sixth in value of the property over which I have a power of appointment by virtue of said deeds, and the said Will, as well as of my residuary estate out of any property in respect to which such disposition is valid, and in like manner to give and appoint to the issue of my deceased niece, Margaret A. Chanler, or in trust for their benefit five equal undivided sixth in value of the property which I am so authorized to appoint and of my residuary estate, and that as between the children of my said niece and the issue of any deceased child, the shares to be held in trust for the said children shall be set apart so far as may be, out of the fund or property in respect to which I have power to create such a trust as is intended to be established by my said Will, and that in case the said trusts cannot be

established in full out of property subject to such disposition, the difference between the amount in value of the share intended for each of the children of my said niece and the amount in value of the property set apart in the establishment of the trust for such child shall vest to him, or, her absolutely.

Second. I authorize and empower my Executors, until my real estate shall have been sold or partitioned amongst the legatees, to lease the same for any lawful term of years and to receive the rents and to apply the same so far as necessary to the payment of insurance premiums, repairs and other reasonable expenses, also
128 to insure against fire, and in case of loss to collect the insurance moneys and apply the same to re-building or repairing the premises injured or destroyed or to distribute the same amongst the persons to whom the real estate is devised.

I give the same powers to the Trustee of the Trusts created by this Will.

Third. I confirm my said Will according to its intent as declared by this Codicil and as hereby modified and hereby republish the same.

In Witness Whereof I have subscribed and sealed these presents and do publish and declare the same as and for a Codicil to my last Will and Testament dated October 18th, 1900 in the presence of the Witnesses attesting the same at my request the eighth day of April Nineteen hundred and one.

LAURA ASTOR DELANO. [SEAL.]

Subscribed, sealed, published and declared by the said testatrix Laura Astor Delano as and for a Codicil to her last Will and Testament dated October 18th 1900 in our presence, who at her request in her presence and in the presence of each other have hereto subscribed our names as Witnesses this entire clause being at the same time read aloud in her and our presence and hearing this eighth day of April, A. D. 1901.

RUTHERFURD STUYVESANT
16 & 18 *Exchange Place New York*
J. LOUIS WEBB
20 *East 55th St New York.*

129 EXHIBIT 2.

Letters Testamentary.

The People of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or whom they may concern, send greeting:

Know ye, that at the County of New York, on the 13th day of October in the year of our Lord one thousand nine hundred and two before Hon. Abner C. Thomas, a Surrogate of our said County, the Last Will and Testament of Laura Astor Delano deceased was proved, and is now approved and allowed by us; and the said deceased

having been at the time of her death a resident of Monte Carlo, principality of Monaco leaving personal property within the County of New York by means whereof the proving and registering said Will and the granting Administration of all and singular the goods, chattels and credits of the said Testatrix and also the auditing, allowing and final discharging the account thereof, doth belong unto us, the administration of all and singular the goods, chattels and credits of the said deceased and any way concerning her Will, is granted unto John Jacob Astor and Warren Delano Jr., each of the City of New York, N. Y. and Franklin B. Lord, of Lawrence, N. Y., the Executors in the said Will named, they being first duly sworn well, faithfully and honestly to discharge the duties of such Executors.

In testimony whereof, we have caused the Seal of Office of the Surrogate's Court of the County of New York to be hereunto affixed.

Witness, Hon. Abner C. Thomas, a Surrogate of our said County of New York at said County, the 14th day of October in the year of our Lord one thousand nine hundred and two.

[SEAL.] J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

130 EXHIBIT 3.

Affidavit of Alfred E. Marling.

Surrogates' Court, County of New York.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO. Deceased.

COUNTY OF NEW YORK, *ss:*

Alfred E. Marling, being duly sworn, saith:

For upwards of twenty years past I have been engaged in business in the City of New York as a real estate broker, agent and appraiser. During the latter part of such period I was, and now am, a member of the firm of Horace S. Ely & Company in said city.

During said period of twenty years, I have been continuously engaged in the business of buying, selling and renting real estate, particularly real estate situated on the Island of Manhattan and in advising with respect to making of loans on such real estate, and for that purpose I have made a special study of the values of real estate on said Island of Manhattan.

For the purpose of the assessment of the transfer tax herein, I was requested by the executors of the will of Laura Astor Delano to make a valuation of the real estate of which she died seized and which was devised by her will. For the purpose of such valuation

I made a special study of the values of said lands, and re-
131 ported to said executors that, in my judgment, the values on June 15, 1902, the date of Mrs. Delano's death, were as follows:

341	Fifth Avenue, lot and building, valued by me at			...	$135,000
343	do	do	do	...	135,000
345	do	do	do	...	140,000
347	do	do	do	...	140,000
67	Third Avenue	do	do	...	30,000
					$580,000

ALFRED E. MARLING.

Sworn to before me this 3rd day of December, 1903.
ELI G. PARTRIDGE,
Notary Public, New York County.

EXHIBIT A.

Deed of William B. Astor, Dated September 30, 1848.

To all to whom these presents shall come, William Backhouse Astor of the City of New York, Merchant, and Margaret his wife send Greeting:

Whereas the said William B. Astor, having purchased the house and land hereinafter mentioned, for the use of his daughter Laura, wife of Mr. Franklin H. Delano, and having also in a testamentary paper by him recently made, spoken of the same as given to her, is now desirous of settling the same in manner hereinafter expressed; which land and premises are the same in which she and her husband now reside: Now these presents witness, That the said William B. Astor and Margaret his wife, in consideration of the natural love and affection which they bear to the said Laura and
132 the other persons hereinafter entitled, and in further consideration of One Dollar to the said William B. Astor and Margaret his wife, by the said Laura and the said other persons entitled (the receipt of which is hereby acknowledged) they the said William B. Astor and Margaret his wife, have granted, bargained and sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Laura wife of Franklin H. Delano All that Lot of Land and Dwelling House in the Fifteenth formerly Ninth Ward of New York on the Westerly side of Lafayette Place and is distinguished on a certain map of nine lots of land situated in the ninth ward of the city of New York, the property of Seth Geer laid out into lots October 14, 1830 by Joseph F. Bridges, City Surveyor, and filed in the office of Register of Deeds for the City of New York, by the number Eight (8): Bounded Easterly in front of Lafayette Place aforesaid: Southerly by lot known on the said map as number Seven (7): Westerly in the rear

in part by land of John Jacob Astor deceased and in part by land lately of John Mason deceased, and Northerly by land known on said map as number nine (9): which lot number eight contains in breadth in front and rear twenty seven feet and in length on each side one hundred and thirty seven feet, six inches, be the same more or less. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof: and all the right of dower of the said Margaret Astor and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law or in equity, of them the said William B. Astor and Margaret his wife of and in the same with the appurtenances: To have and to hold the said land and premises unto the said Laura for her life,

133 unless and until she or her husband to whom she may be married or any one claiming under or against them or either of them shall at any time or in any manner, by deed, contract, gift, grant, judgment, decree, execution, claim in equity, attachment or other act or default make, create or allow, suffer or permit to be made or created any sale, charge, incumbrance or other disposition of the said lands (excepting the leases, sales or mortgages hereinafter authorized) or of the rents, issues or profits thereof or any of them or any part thereof or of any interest therein; in any of which cases the life estate, of the said Laura hereby granted shall cease and determine: And the said William B. Astor and Margaret his wife, in consideration as aforesaid, do in any such event, and upon and from any such determination of the estate of the said Laura do grant and convey all and singular the said premises with their appurtenances unto James Gallatin and John Jacob Astor son of the said William B. Astor and their heirs as joint tenants in trust to receive the rents, issues and profits thereof during the life of the said Laura and to apply the same to her use.

And the said William B. Astor and Margaret his wife, in consideration as aforesaid do grant all and singular the said premises with their appurtenances from the death of the said Laura unto her issue surviving her, if any, and their heirs and assigns forever taking *per stirpes* and in default of such issue, or in case of any such issue not attaining the age of twenty one years, then the said William B. Astor and Margaret his wife do grant the said land or the share of such issue therein or which such issue would if surviving have taken, unto the brothers of the said Laura and her sister Alida and their children and issue, as they may then survive, taking *per stirpes:* to have and to hold to them and their heirs forever.

Provided however and power is hereby granted unto the

134 said Laura, in her discretion to give the said land and premises or any share or part thereof to and amongst her said issue, brothers, sister Alida, or their issue, in such manner and proportions as she may appoint by instrument in its nature testamentary to be acknowledged by her as a deed in the presence of two witnesses or published by her as a will.

Provided also, that it shall be lawful for the said Laura, with the

concurrence of her husband and James Gallatin and John Jacob Astor or of any two of them to make any lease of the premises for any lawful term of years, with such covenants as they may think expedient for the advantage of the property, provided that the rents and benefits reserved on the said leases shall be payable annually or at shorter periods to the parties entitled in possession and remainder according to their respective interests and no premium or fine shall be taken for or upon any such lease.

Provided also and it shall be lawful for the said Laura with the like assent and concurrence to sell or mortgage the said lands in fee simple on condition that the money be paid to the said James Gallatin and John J. Astor and, in case of a sale, held invested on the same trusts and limitations of estate as the lands sold, and in case of mortgage be applied to rebuilding, repairing or improving the mortgaged premises, for which purpose only is the same to be mortgaged: and the acquittances of the said trustees shall discharge the purchaser or mortgagee from the obligation to see to the application of the purchase money.

Provided also, that the said Laura may and she is hereby, empowered in her discretion from time to time to appoint any other person or persons as substitutes for the said James Gallatin and John Jacob Astor in all their estate, interest, powers and offices under
135 this deed, in case they or either of them shall die, remove from this State or decline the further execution of the duties in these presents expressed. And upon such appointment being made, such substitute shall take and have, in all respects, the estate, authority, interest and office of him in whose place he may be appointed and the proper conveyances may be made to him: And so on, from time to time as the said named parties or the substitutes and successors appointed in their place, shall die remove or decline.

And provided further, that it shall be lawful for the said William B. Astor and Margaret his wife, and the survivor of them, at any time during the life of the said Laura to appoint, convey and settle the said land and premises hereby granted to her sole and separate use in equity, notwithstanding her coverture with remainders as to them or the survivor of them may seem fit.

And the value of the said premises as an advancement to the said Laura is declared to be eighteen thousand five hundred dollars.

In Witness whereof the said William B. Astor and Margaret his wife, and the said James Gallatin and John Jacob Astor have hereunto set their hands and seals this thirtieth day of September in the year one thousand, eight hundred and forty-eight.

WM B ASTOR [L. S.]
MARGARET ASTOR [L. S.]
JAS. GALLATIN [L. S.]
J. J. ASTOR JR. [L. S.]

Sealed and delivered in the presence of (The words "five hundred being interlined on this page.)
W. W. BRUCE.

136 STATE OF NEW YORK
City and County of New York ss:

On this twenty fifth day of October in the year One thousand eight hundred and forty eight before me personally came William W. Bruce to me known who being duly sworn says he resides in the City of New York and knows William B. Astor Margaret Astor, James Gallatin and John Jacob Astor Junior to be the individuals described in and who executed the foregoing Instrument.—That deponent was present at the execution thereof and saw the said William B. Astor, Margaret Astor, James Gallatin and John Jacob Astor Junior sign their names thereto and that they duly acknowledged the execution thereof whereupon this deponent became a subscribing witness to such execution.

A. B. AMERMAN,
Commissioner of Deeds.

EXHIBIT B.

Deed of William B. Astor, Dated September 6, 1849.

These presents witness—That William B. Astor of the city of New York, in consideration of his love and affection to Laura (wife of Mr. Franklin H. Delano,) his daughter and in consideration of one dollar to him paid by James Gallatin and John Jacob Astor Jr., hath given, granted and transferred and doth give, grant and transfer to them, Fifty thousand dollars of the Public Debt of the State of Ohio, the certificates for which are herewith delivered, to have and to hold the same to them, the survivor and successors of them, upon the trusts hereinafter declared, namely:

137 To receive the interest and income thereof and to apply the same, as it shall be received, to the use of the said Laura during her life, free from the disposal or incumbrance of her husband present or future and as her separate estate which application to her use may be made by payment to her on her own receipt, but not by way of anticipation: and she or her husband at her request may be authorized to receive such interest and income for her use, if the trustees shall from time to time think fit.

And upon the further trust, upon her death to transfer and convey the capital of the said stock to the issue of the said Laura surviving her, *per stirpes*, and to their executors and administrators; provided they shall attain the age of twenty one years or die under that age leaving issue. But if she shall leave no issue surviving her then to transfer the said capital, to her surviving brothers and sister Alida and to the issue of any of them who may have deceased leaving issue then surviving, such issue to take such share as their parent if living would have taken.

And, if any of the issue of Laura shall die under the age of twenty one years without surviving issue then the share of the said capital to which the deceased would have been entitled at the said age shall be conveyed to her brothers and sister Alida and the surviving issue

of any of them who may be deceased, taking their parents' share as aforesaid.

But the said capital is not to be transferred to the persons thus designated until they shall respectively attain the age of twenty one years; and until that time, the said trustees shall retain the respective shares of those who shall be under such age in their hands and apply the income thereof to the use of such minors, ac-
138 cumulating any surplus of their respective shares, to be conveyed with the said capital when it shall be transferred, to the persons entitled as above.

Provided however that it shall be lawful for the said Laura, by any instrument executed duly as a will of personal estate, to dispose of the said capital unto and amongst her issue, brothers, sister and their issue, in such shares and proportions as she may think fit and upon such limitations, by way of trust or otherwise as in her discretion may be lawfully devised.

And Provided further, that the said trustees (the assent of the said Laura being first given if she be living) may sell or dispose of the said stock and invest the proceeds, and also the amount of the said debt and of any substituted debt if paid off, in the public debt of the United States or of the State or City of New York or on bonds secured by mortgages of productive real estate; and may in like manner from time to time change all substituted investments by such disposal and by reinvestment in other securities within the above enumeration; but the fund, into whatever form, it may thus be changed, shall stand upon the same trusts, limitations of interest and powers as are herein expressed both as to income and capital.

Provided also, that in the event of the said trustees or any trustee from time to time substituted shall die or remove from the State of New York or decline the further execution of the trusts, the remaining trustee shall, (on the nomination of the said Laura during her life) appoint a new trustee from time to time by deed duly acknowledged, who shall thenceforth have all the interest, trust and power of him for whom he shall be substituted and the needful conveyances to him shall be executed.

139 In Witness whereof the said William B. Astor and the above named trustees have hereunto set their hands and seals the sixth day of September, in the year of our Lord, one thousand, eight hundred and forty nine.

WM. B. ASTOR. [L. S.]
JAS. GALLATIN. [L. S.]
J. J. ASTOR, JR. [L. S.]

Sealed and delivered in the presence of
WM. W. BRUCE.

Nos. 21667 @ 21,671. 5 certificates $10,000 each. Ohio Canal 6's. 1860 in the names of Jas. Gallatin & John Jacob Astor Jr. dated 6 Sept. 1849.

EXHIBIT C.

Deed of William B. Astor and Others, Dated September 10, 1844.

To all to whom these presents shall come, we John Jacob Astor of the City of New York Merchant and William Backhouse Astor of the City of New York, Merchant and Margaret his wife, send Greeting:

Whereas upon a contemplated marriage of Laura daughter of William B. Astor and grand daughter of John Jacob Astor they are desirous of making a provision by way of settlement to her use in the manner hereinafter expressed: and for this purpose to appropriate the land hereinafter expressed to be granted which was conveyed by the said John Jacob Astor to the said William B. Astor by deed bearing date the twenty second day of February in the year eighteen hundred and forty two: and also One hundred thousand dollars City Water Stock parcel of five hundred thousand dollars of said Stock transferred by the said John Jacob Astor to the said William B. Astor on or about the eighth day of September in the year of
140 our Lord one thousand eight hundred and forty one, and also a further sum of Fifty thousand dollars of the New York City Water Stock herewith transferred to James Gallatin and John Jacob Astor the younger trustees for certain purposes of this settlement. Now know all men by these presents that in consideration of the natural love and affection which the said John Jacob Astor and William Backhouse Astor bear to the said Laura Astor, and in consideration of one dollar to them paid by the said Laura Astor, James Gallatin and John Jacob Astor the younger (the receipt of which is hereby acknowledged) they the said John Jacob Astor and William B. Astor, have granted and given and do hereby grant and give unto the said Laura Astor the interest and income of the said One hundred and fifty thousand dollars of the Debt of the City of New York commonly called the Water Stock, (the certificates of which now are delivered to the said James Gallatin and John Jacob Astor the younger) and of all moneys to be received thereon and of any investments which may in any event be substituted therefor, to be had, holden, taken and received by the said Laura for her life, unless and until she or her husband to whom she may be married, or any one claiming under or against them or either of them shall, at any time or in any manner by deed, contract, gift, grant, judgment, decree, execution, claim in equity, attachment or other act or default, make, create or allow, suffer or permit to be made or created any sale, disposition, charge or incumbrance of any then accruing or future payments of such income or interest or any part thereof: in any and every of which cases the right and interest of the said Laura or of her husband in such interest and income shall cease: and in consideration as aforesaid the said John Jacob Astor and William Backhouse Astor do give and grant the income and interest of the said Stock or its substitute or the money thence to be derived, from and after

any such termination of the said right and state of the said
141 Laura or her husband, unto the said James Gallatin and John Jacob Astor the younger, as trustees during her life to receive the said interest and income to apply the same to the use of the said Laura. And the said James Gallatin and John Jacob Astor the younger are to execute revocable Letters of Attorney from time to time as required by the said Laura authorizing her or her husband to receive the interest on the said Stock or the moneys thence to be derived. And in consideration as aforesaid the said John Jacob Astor and William Backhouse Astor do give and grant the capital of the said One hundred and fifty thousand dollars, on the death of the said Laura to her surviving issue, in such manner and proportions as she may in her discretion (as by an express power) appoint by instrument in the nature of a will: and in default of such appointment, to such issue, in equal shares *per stirpes:* Provided however that an express discretionary power is hereby granted to her to give not exceeding one fourth part thereof by will to her husband surviving her: And in case the said Laura shall leave no surviving issue, or in case any of such issue shall depart this life under the age of twenty one years, then the share or shares which would have gone to such issue, shall be and are hereby given to the persons who would be legal representatives of the said Laura by consanguinity only and if the said Laura shall die leaving no issue, the further express power is given to her to appoint the said Capital to and amongst such representatives, or any of them in such shares and manner as she may think fit and to give to her husband not exceeding one fourth part as aforesaid.

And furthermore the said William Backhouse Astor and Margaret his wife in consideration as aforesaid do grant and give unto the said Laura Astor their daughter: All that piece and parcel of
142 land in the City of New York bounded Easterly by the Eighth Avenue, Northerly by Fifty seventh Street, Westerly by the Hudson River and Southerly by Fifty fourth Street, together with all and singular the hereditaments and appurtenances thereof and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof and all dower and right of dower of said Margaret therein: to have and to hold the said now granted lands and premises unto the said Laura Astor for life, unless and until she or her husband to whom she may be married or any one claiming under or against them or either of them, shall, at any time or in any manner, by deed, contract, gift, grant, judgment, decree, execution, claim in equity, attachment or other act or default, make, create, or allow, suffer or permit to be made or created any sale, charge, incumbrance or other disposition of the lands hereby granted, excepting the leases, sales or mortgages hereinafter authorised, or of the rents, issues or profits thereof or any of them or any part thereof or of any interest therein in any of which cases the life estate to the said Laura hereby granted shall cease and determine: and, in consideration as aforesaid, the said William B. Astor and Margaret his wife, do give and grant, upon and from any such determination of the estate of the said Laura, all and singular the said lands with their

appurtenances unto the said James Gallatin and John Jacob Astor the younger and their heirs as joint tenants, in trust, to receive the rents, issues and profits of the said lands during the life of the said Laura and to apply the same to the use of the said Laura.

And in consideration as aforesaid, the said William Backhouse Astor and Margaret his wife, do grant all and singular the said lands and the rents, issues and profits thereof, with all their appurtenances, from the death of the said Laura unto her surviving issue and their heirs and assigns forever, taking *per stirpes:* and in default
143 of such issue, or in case of any such issue not living to attain the age of twenty one years, then the said lands or the share of such issue therein or which such issue would have taken, are hereby granted unto persons who would be the heirs at law of the said Laura by consanguinity to be had and holden to them and their heirs forever.

Provided however, and power is hereby granted unto the said Laura in her discretion to give the said lands or any share or part thereof to and amongst her said issue or heirs, in such manner and proportions as she may appoint by instrument in its nature testamentary, to be acknowledged by her as a deed and in presence of two witnesses or published by her as a will.

Provided also, that it shall be lawful for the said Laura, with the concurrence of her husband and the said James Gallatin or John Jacob Astor the younger, or of the two latter from time to time to make any lease or leases of the said lands or any part thereof for any term or terms of years not exceeding twenty one years from the date of the leases respectively, with covenants or conditions for the payment for valuable erections thereon, if they shall think fit, but the rents and benefits reserved on the said leases shall be payable or reserved annually or at shorter periods to the parties who shall be entitled in possession or remainder, and no premium or fine shall be taken for or upon any such leases.

Provided also, and it shall be lawful for the said Laura, with the like assent and concurrence, to sell or mortgage, of the said lands not more than one third in value, and the same to convey in fee simple to any purchaser or mortgagee, on condition that the moneys derived from such sales or mortgages shall be paid or secured to be paid to the said James Gallatin and John Jacob Astor the
144 younger or the survivor of them to be applied to improvement of the residue of the said lands by improvements of a permanent character: and the acquittances of the said persons so assenting or concurring shall discharge the grantees or mortgagees and establish the conveyances or mortgagees free from any obligation or condition as to the purpose of the sale or mortgage, the quantity or portion sold or mortgaged or the application of the money paid.

And provided further, that the said Laura is expressly authorised to appoint any other person or persons as substitutes for the said James Gallatin or John Jacob Astor the younger, in all their estate, interest, powers and offices under this deed, in case they or either of them shall die, remove from this State or decline the further execu-

tion of the duties in these presents expressed: and upon such appointment being made, such substitute shall take and have in all respects the estate, interest, authority and office of him in whose place he may be appointed and the proper conveyances may be made to him: and so on from time to time, as the said named parties or the substitutes and successors appointed in their place shall die, remove or decline.

And Provided further, that it shall be lawful for the said William Backhouse Astor and Margaret his wife and the survivor of them, at any time during the life of the said Laura, to appoint, convey and settle the estate and interest hereby granted to her, to her sole and separate use in equity notwithstanding any coverture to which she may be subject. And it is hereby declared by the said John Jacob Astor and William Backhouse Astor, that the lands and stock hereby conveyed are by them estimated as of the value of two hundred thousand dollars and upwards: and the same are to be, to the extent of that sum an advancement by the said William Backhouse
145 Astor for the said Laura (of her inheritance under his will)

In Witness whereof the said John Jacob Astor, William Backhouse Astor and Margaret his Wife, Laura Astor, James Gallatin and John Jacob Astor the younger, have hereunto set their hands and seals this tenth day of September in the year of our Lord, one thousand eight hundred and forty four.

J. J. ASTOR. [L. S.]
WM. B. ASTOR. [L. S.]
MARGARET ASTOR. [L. S.]
LAURA ASTOR. [L. S.]
JAS. GALLATIN. [L. S.]
J. J. ASTOR, JR. [L. S.]

Witness:
W. W. BRUCE.

STATE OF NEW YORK,
City & County of New York, ss:

On this 16th day of November A. D. 1859 before me personally came Wm. W. Bruce subscribing witness to the above instrument to me known who being by me duly sworn says that he resides in the City of New York he was acquainted with John J. Astor and Wm. B. Astor and knew them to be the individuals described in and who executed the said instrument that he saw them sign the same that they acknowledged in his presence that they executed the same and that he the said Wm. W. Bruce subscribed his name as a witness thereto

WM. LEE,
Com. of Deeds.

STATE OF NEW YORK,
City & County of New York, ss:

On this 16th day of November A. D. 1859 before me personally came Margaret Astor wife of Wm B Astor known to me to be
146 one of the individuals described in and who executed the above instrument and who acknowledged to me on a private examination by me separate and apart from her husband that she executed the same freely and without any fear or compulsion of her said husband WM LEE *Com of Deeds*

EXHIBIT D.

Deed of William B. Astor, Dated October 28, 1865.

These Presents made the twenty eighth day of October in the year of our Lord, one thousand, eight hundred and sixty five.

Between William Backhouse Astor of the City of New York of the one part, John Jacob Astor, Junior, William Astor and George De Forest Lord, of the same city, of the second part, and Laura wife of Franklin H. Delano, on behalf of herself and her representatives hereinafter expressed or described, of the third part.

Whereas the party of the first part is minded to make a further provision, independent of any heretofore made or hereafter to be made by him for his said daughter and her representatives, and not to be taken as an advancement or ademption of any legacy or provision for them; and in pursuance of such purpose hath at the same time with the delivery of these presents transferred to the parties of the second part as Trustees, One hundred thousand dollars of the Public Debt of the State of New York, and One hundred thousand dollars of the Public Debt of the State of Ohio, at par. To have and hold, manage and dispose of the same upon and for the
147 Trusts and on the conditions and for the purposes and with the powers herein declared in respect of the said sums amounting as aforesaid to Two hundred thousand dollars: That is to say, that the parties of the second part, the survivors and survivor of them, and their successors in the Trust, receive the income of the said sum and of every part thereof and of any property which may be substituted therefor according to the provisions hereinafter contained, and after defraying all just charges and indemnities to apply the income thereof, so long as the same shall not be attempted to be withdrawn from the possession and management of the said Trustees or their successors in the Trust, nor be subjected to any debts, claims, assignments or incumbrances of any kind, of any other persons created or arising from the act or default of my said daughter, her husband or his or her representatives, to the use of my said daughter during her life.

And on her death or other termination of the Trust, to divide and distribute the Capital of the said funds, to and among her issue, then surviving, to be equally divided among them, the issue representing their parents respectively: But, in case any of the

said issue shall depart this life before attaining the age of twenty one years without surviving issue, the share of such deceased shall be accounted for and vested in the surviving brothers and sisters, if any of the person so deceased: And the portions or shares of such deceased under age shall continue to be managed by the said Trustees and their successors in office, until the termination of the infancy of the person and persons entitled thereto.

And in case the said party of the third part shall depart this life without issue surviving her, or in case any issue surviving her shall not attain the age of twenty one years, then the share or portion of the said party or her said issue, shall be vested in the
148 brothers and sisters of my said daughter, and in my grand daughter Margaret A. Chanler, or in their issue surviving, according to representation of children to their parents shares respectively in all cases.

Provided however and these presents are on the limitations and condition further: That it shall be lawful for my said daughter, party of the third part by any instrument testamentary in its nature and executed as such, to give, appoint and bequeath the said sum now settled and any part and parcel thereof to and amongst my children or their issue or any one or more of them who may survive her in the event of her death without surviving issue or of the death of such issue under the age of twenty one years.

Provided also that my said daughter may in her discretion to be exercised or withheld at her pleasure, by an instrument in nature of a Will give any amount not exceeding one half of the Capital to her husband if he shall survive her.

And it is further witnessed: That it shall be lawful for the said parties of the second part and the survivors or survivor of them and their successors on the Trust, in their discretion to sell and convey all or any part of the said Trust property and to reinvest the same in their discretion, and so from time to time with the reinvestments made during the Trust, in Bonds secured by Mortgage of unincumbered real estate in the City and County of New York and in the Public Debt of the United States of America and of the States of Pennsylvania, Massachusetts, Ohio and New York, or in of such Public Debts, in whole or in part. But no such change of investments shall be made against the consent of my said daughter.

And it shall be lawful for the Trustees and their successors
149 in the Trust to make revocable powers of attorney from time to time, but not against the consent of my said daughter to authorize any person or persons as their attorney or attornies to receive and pay over the income of the Trust funds, from time to time, while the acting Trustees shall think it discreet so to do.

And in case of the absence from the State or inability of any sort of any of the said Trustees or their successors, it shall be lawful for the remaining and resident Trustee to receive and apply all the income, according to the terms of the Trust.

Provided also, and it is hereby expressed, that in case of the death or resignation of any of the Trustees or their successor in office, it shall be lawful for the remaining or surviving Trustees

or Trustee to appoint and associate a new Trustee or Trustees from time to time to whom proper conveyances shall be made according to the same Trusts as are herein expressed, but no such Trustee shall be appointed against the consent of my daughter or her representatives, party of the third part.

And it is expressly provided; That the accounts which shall from time to time be rendered by the said Trustees or their successors, on the request of the party of the third part, or on their own motion, shall be taken and deemed just and true and a complete protection and indemnity to them, unless intentional fraud shall be affirmatively shown and proved: And the said Trustees and their successors shall be indemnified in all their lawful proceedings in the premises out of the income and capital of the Trust property.

In witness whereof the parties of the first and second parts have hereunto interchangeably set their hands and seals the day
150 and year first above written; the party of the third part not being required so to do.

WM. B. ASTOR. [L. S.]
J. J. ASTOR, JR. [L. S.]
WM. ASTOR. [L. S.]
GEORGE DE FOREST LORD. [L. S.]

Sealed and delivered in the presence of, one alteration in page 2 before signing, as to all the parties,
DANIEL LORD.

EXHIBIT E.

A Will of William Backhouse Astor of the City of New York, Merchant.

I William Backhouse Astor of the City of New York Merchant in order to make the disposition hereinafter expressed of the amount which at my decease I shall hold or be entitled to in the Public Debt of The United Kingdom of Great Britain and Ireland commonly called three per cent. Consols do devise and bequeath in manner following:

First: To my dear wife Margaret I give the income of ten thousand pounds sterling (of par) during her life; with power to her by any instrument of appointment in the nature of a will to give the capital at her death to all of our children and issue or to any one or more of them in such sums or proportions as she may think fit; and in case she chooses not to make any such appointment I give the capital to my two sons John and William; in case of the death of either of my said sons leaving issue surviving her, the issue shall take their parents share, and in case of the death
151 of either without issue surviving her, his share shall accrue to his brother, or his surviving issue if he be deceased.

Second: To my dear daughter Alida wife of John Carey, Jr., Esqre., I give the income of ten thousand pounds sterling (at par).

To my dear daughter Laura wife of Franklin H. Delano, Esqre., I give the income of ten thousand pounds sterling (of par).

To my dear granddaughter Margaret wife of J. Winthrop Chanler Esqre. I give the income of the like sum of ten thousand pounds sterling of par. And I direct that the capital of each of the said legacies be retained by the Executors or Executor of this Will and the income paid over as received to the separate use and on the separate receipt of the said three ladies respectively and not by anticipation nor to be subject to the control debts or engagements of them or their husbands respectively: But the Executors or Executor may, so long as they shall see fit to permit the same, authorize the said ladies respectively by a power of attorney revocable, to receive the said income to them respectively appertaining.

Third: On the death of my said daughters in the second Clause above named respectively, I give the capital sum of which she was to have the income to her surviving issue, taking *per stirpes* if of different degrees of kindred; if she shall leave no surviving issue, I give the capital to her brothers and sisters and the surviving issue of deceased brothers and sisters taking *per stirpes*.

On the death of my said granddaughter I give the capital of which she is to have the income to her surviving issue who shall attain the age of twenty-one years *per stirpes:* in default of such issue attaining such age I give the capital to my said two sons and daughters and the issue of any of them who may be deceased *per stirpes*; the income for such issue under age to be applied to their use.

152 And I give to each of the said daughters and to my granddaughter the power, notwithstanding the above limitations of capital, to dispose thereof to and amongst her kindred of my blood or any of them in such sums or proportions as she may think fit, so that the same may be done by an instrument of appointment testamentary in its character and execution.

Fourth: The residue of my said British Consols, and all sums which may not be effectually disposed of by the foregoing dispositions, I give to my sons John J. Astor and William Astor and if either or both shall have died leaving issue, each issue shall take their parent's share by representation, or if either shall die without surviving issue his brother or his brother's surviving issue shall take the whole of such residue and sums not effectually disposed of.

Fifth: I appoint my said two sons John Jacob Astor and William Astor and my friend Alexander Gillespie of London or in case of his death or declining, Robert Gillespie of London in his place, to be executors of this Will and Trustees of the said four sums of ten thousand pounds each; with the power to act by revocable delegation, also in their discretion to sell the said funds in part or in whole and in reinvest the proceeds in other safe securities of the United Kingdom or of the United States of America or the State of New York, so from time to time; and the said English Executors and Trustees are to receive the ordinary Bankers Commission for their services in the management of the property in the same manner as if they were not Trustees; and they are to be indemnified for all their expenses and lawful or just charges.

And I declare and direct that this is to be deemed a special and limited Will applicable to the said British Consols only and not to affect nor to be affected by any other testamentary paper
153 by me made or to be made unless expressly referring to this property and this Will—I revoke all other dispositions of this British Debt.

In witness whereof I have subscribed these presents as a Will and declare the same as such in presence of the witnesses attesting the same at my request at New York this twenty-seventh day of June in the year of Our Lord one thousand eight hundred and sixty-two.

WM. B. ASTOR.

Subscribed by Wm. B. Astor as a Will in our presence attesting the same at his request and in presence of him and of each other this twenty-seventh day of June, A. D. 1862.

DANIEL LORD,
34 *West* 17 *Street, New York.*
PATRICK HOGAN,
49 *Willow Street, Brooklyn.*

By this codicil to my special disposition of my British Consols dated June 27, 1862.

I William Backhouse Astor do bequeath, devise and dispose as follows:

I give, by way of increase of the amounts in the first and second clauses of such special disposition, Ten thousand pounds sterling of the par of the stock (in all Forty thousand pounds) being for my wife, my two daughters and for my granddaughter Margaret A. Chanler; so that Twenty thousand pounds shall be the capital sum, of which the income and power of disposal shall be appropriated to each, and shall be and is both as to capital and income limited, given and disposed of according to the terms of the said Will applicable to each person and sum respectively, and in the same manner, in all respects, as if Twenty thousand pounds had in each instance
154 been originally written in the place of Ten thousand pounds.

And as to such increased amounts, namely Twenty thousand pounds sterling in each instance, and as to each person respectively and her representatives, I apply all and singular the provisions of my said disposition of Consols as are respectively applicable; which disposition is to be applied exclusively to British Consols and shall not interfere with or be interfered with, by the other dispositions of my estates.

In witness whereof I have subscribed this as a Codicil to my said Will of June 27, 1862, and declare the same to be such, in presence of the witnesses attesting the same, this twelfth day of April in the year of our Lord one thousand eight hundred and sixty-four.

WM. B. ASTOR.

Subscribed by William B. Astor as a Codicil to his Will dated June 27, 1862, and so declared by him in our presence subscribing the

same as witnesses at his request and in presence of him and of each other April 12, 1864.

DANL. LORD,
34 *W.* 17 *Street, N. York.*
HENRY DAY,
No. 47 *W* 19 *St. N. York.*

A further codicil to the Will of William Backhouse Astor which bears date the twenty-seventh day of June in the year of our Lord, eighteen hundred and sixty-two.

As to the sum of Twenty thousand pounds British Consols, mentioned in the first Clause of the said Will and the Codicil thereto, which on the death of my dear wife Margaret are limited to my sons John and William or their issue, in default of her appointment of the same, I direct devise and bequeath in relation to the said
155 sum of Twenty thousand pounds if not duly appointed and given by my wife in manner following:

First. I give to the use of my daughter Mrs. Alida Carey the income of one third part thereof for her natural life, and on her death I give the capital to her surviving issue, and if leaving no surviving issue, I give the same third part to her brothers and sister and the surviving issue of deceased brothers and sisters, and with the like power of appointment as is contained in second and third Clauses of my said will.

Second. I give to the use of my daughter Mrs. Laura Delano the income of one other third part of the said Twenty thousand pounds for her natural life, with a like limitation on her death and a like power of appointment.

Third. And I give to the use of my granddaughter Mrs. Margaret A. Chanler, the income of the other third part of the said Twenty thousand pounds for her natural life, with like limitation on her death and a like power of appointment.

And the limitations to my sons John and William of the said Twenty thousand pounds are revoked.

Fourth. Should there be any impediment in the law to giving clear effect to my dispositions of my property embraced in my said Will of June 27, 1862, by separate probate thereof, or letters testamentary thereon or by a separate testamentary instrument, then I authorize my Executors to carry out the same by delegating to the Executors named in this Will, all the powers needed to carry out the provisions thereof, which delegation shall have the like effect in all questions of account and administration as if directly sanctioned by me.

156 In witness whereof I have subscribed this as a Codicil to my said Will of June 27, 1862, and declare the same to be such in presence of the witnesses attesting the same, this nineteenth day of January in the year of our Lord one thousand eight hundred and sixty five.

WM. B. ASTOR.

Subscribed by Mr. Wm. B. Astor as a Codicil to his Will dated June 27, 1862, and so declared by him in our presence subscribing

the same as witnesses at his request and in presence of him and of each other—1865 January 19.

DANIEL LORD,
34 *West* 17 *Street, New York.*
GEORGE DE FOREST LORD,
34 *W.* 17 *Street, N. York.*

I, William B. Astor of the City of New York having before me my Special Will or testamentary disposition of my British Consols, bearing date the twenty-seventh day of June eighteen hundred and sixty-two, with the two Codicils thereto dated respectively April 12, 1864 and January 19, 1865, do hereby make, publish and declare this further Codicil thereto, that is to say:—

First. I revoke those provisions of said Special Will or disposition and the first Codicil thereto by which the capital of the sum of ten thousand pounds sterling, increased by the said first Codicil to twenty thousand pounds, of which my granddaughter Margaret A Chanler is to receive the income for life, is given upon her death to her surviving issue who shall attain the age of twenty-one years per stirpes and in default of such issue attaining such age is limited over otherwise, and in lieu thereof I give the capital of the said twenty thousand pounds sterling, upon the death of my said granddaughter Margaret A Chanler, to her issue who shall survive her,
157 absolutely, in equal shares, per stirpes and not per capita, and should she leave no issue her surviving, then in equal shares to my sons John and William and my daughters Alida and Laura, or such of them as shall survive said Margaret, and to the then surviving issue of such of them as shall die before her leaving issue who shall survive her, such issue taking per stirpes and taking collectively only the share which my son or daughter, whose issue they are would have taken if living.

Second. I declare that the person named Robert Gillespie in said original special Will or disposition as one of the Executors thereof, and whom I then intended and now intend and appoint as such Executor, was at the time of making such original special Will Robert Gillespie Junior, but is now Robert Gillespie.

Third. In case from any legal difficulty or impediment, my said special Will or disposition of June 27, 1862, as varied by the Codicils thereto, cannot receive probate or take effect as a separate testamentary disposition of my said British Consols, independent of and disconnected from my general last Will and testament which bears date June seventeenth, eighteen hundred and fifty six, and to which there are several codicils, then I will and declare that said special will or disposition of June twenty seventh, eighteen hundred and sixty two, in connection with and as varied by the several Codicils thereto including this one shall take effect by way of further Codicil to my said general Will of June seventeenth, eighteen hundred and fifty six, and to that end I do hereby republish said Special Will and its two Codicils all of which are hereunto annexed, in connection with this Codicil, and as varied by said successive codicils including this one, to stand in case of need, by way of further codicil to my said

general Will. But I will and declare that in any case the
158 provisions of said Special Will and Codicils as they now stand, giving effect to the Codicils in their order, shall take effect absolutely, and wholly unaffected and uncontrolled by anything contained in my said general Will or the Codicils thereto unless it be as to the appointment of Executors by my general Will. But I declare that I, of course, did not and do not intend to constitute or appoint either the said Robert Gillespie or Alexander Gillespie to be an Executor of my said general Will.

In testimony whereof I have hereto set my hand and seal at the City of New York on the twenty ninth day of May, eighteen hundred and sixty nine. WM. B. ASTOR [L. S.]

On this twenty ninth day of May, eighteen hundred and sixty nine, the above named testator William B. Astor in our presence subscribed and sealed the foregoing instrument and declared the same to be a further Codicil to his annexed Special Will or testamentary disposition of his British Consols, bearing date June twenty seventh, eighteen hundred and sixty two and to serve as therein mentioned in case of need, in connection with the said annexed Special Will and the two annexed Codicils thereto, by way of further Codicil to the general Will of said testator, and thereupon we, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

DANIEL D. LORD,
45 *West 19th Street, New York City.*
GEORGE DE FOREST LORD,
34 *West 17th Street, New York City.*
DANIEL LORD, JR.,
45 *West 19th Street, New York City.*

159 EXHIBIT F.

Affidavit of Alfred E. Marling.

Surrogates' Court, New York County.

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of Laura Astor Delano, Deceased.

COUNTY OF NEW YORK, *ss:*

Alfred E. Marling, being duly sworn saith:

For upwards of twenty years past I have been engaged in business in the City of New York as a real estate broker, agent and appraiser. During the latter part of such period I was, and now am, a member of the firm of Horace S. Ely & Company in said city.

During said period of twenty years I have been continuously engaged in the business of buying, selling and renting real estate, par-

ticularly real estate situated on the Island of Manhattan and in advising with respect to making of loans on such real estate, and for that purpose I have made a special study of the values of real estate of the said Island of Manhattan.

For the purpose of the assessment of the transfer tax herein, I made a special study of the values of the lands hereinafter described and found the values of the several parcels to be, in my judgment, as hereinafter stated, the various properties so valued being
160 classified with reference to certain instruments which, as I am informed, created powers of appointment which, as I am informed, were exercised by the will of Laura Astor Delano.

Said valuations have been made as of June 15, 1902, the date of Laura Astor Delano's death:

1. Property devised by Tenth Article of the Will of John Jacob Astor to William B. Astor for life, with power to appoint, and by the Fifth Article of the Will of William B. Astor devised to Laura Astor Delano, with power to appoint.

268 Sixth Avenue
270 do
272 do
274 do
276 do
61 West 17th Street, plot and building, valued by me at... $425,000
55 West 17th do do do 50,000
57 West 17th do do do 50,000
59 West 17th do lot, valued by me at..... 50,000
308 West 15th do do do 13,000
310 West 15th do do do 13,000

2. Property devised by the second clause of the Fifth Codicil of Will of William B. Astor to Laura Astor Delano for life with power to appoint.

190 Madison Ave., lot and building, valued by me at..... $150,000
15 East 34th St., do stable do 80,000

3. Property belonging to trust estate created by Fifth Clause of the Will of William B. Astor, with power to appoint.

382 Broadway, lot and building, valued by me at..... $225,000
331 W. 14th St. do do 18,000

4. Property conveyed by William B. Astor and his wife to Laura Astor Delano for life, with power of appointment, by deed dated September 30, 1848.

45 Lafayette Place, lot and building, valued by me at..... $50,000

4½. Real estate held by the Trustees of the Trust created by
161 William B. Astor for the benefit of Laura Astor Delano for life, with power to appoint by deed dated the 28th day of October, 1875.

No. 57 East 120th St., lot and building, valued by me at.... $10,000

5. Real property conveyed by William B. Astor and his wife to Laura Astor Delano for life, with power of appointment, by deed dated September 10, 1844, said lands being known as the Cozine Farm.

Block 1045.

911 Eighth Avenue, 303 West 54th Street, 913 Eighth Avenue,	Subject to lease.....	$55,000
915 Eighth Avenue, 919 do. 305 West 54th Street,	Subject to lease.....	60,000
921 Eighth Avenue, 923 do.	Subject to lease	45,000
925 do. 927 do. 302 West 55th Street,	Subject to lease.....	60,000
307 West 54th Street,	Subject to lease.....	11,000
304 West 55th Street,	do. do.	8,000
306 do.	do. do.	8,000
308 do.	do. do.	8,000
310 do.	do. do.	8,000
312 do.	do. do.	8,000
314 do.	do. do.	8,000
316 do.	do. do.	8,000
318 do.	do. do.	8,000
320 do.	do. do.	8,000
322 do.	do. do.	8,000
324 do.	do. do.	8,000
326 do.	do. do.	8,000
328 do.	do. do.	8,000
330 do.	do. do.	9,500
332 do.	do. do.	9,500
334 do.	do. do.	9,500
336 do.	do. do.	9,500
338 do.	do. do.	9,500
340 do.	do. do.	9,500
342 do.	do. do.	9,500
344 do.	do. do.	9,500
346 do.	do. do.	9,500

348 West 55th Street,	Subject to lease.....	9,500
350 do.	do. do.	9,500
352 West 55th Street,	Subject to lease	9,500
354 do.	do. do.	9,500
356 do.	do. do.	9,500
358 do.	do. do.	9,500
360 do.	do. do.	9,500
362 do.	do. do.	9,500
364 do.	do. do.	9,500
366 do.	do. do.	9,500

368	do.	do.	do.		6,500
370	do.	do.	do.		6,500
372	do.	do.	do.		6,500
321	West 54th Street,	12 vacant lots,			
323	do.	Less for gores appraised			
325	do.	at end of list	$13,200		
327	do.		7,400		
327 adj.	do.				
339–351	do.		$20,600		99,400
830	Ninth Avenue, Subject to lease.....				12,000
832	do.	do.	do.		12,000
834	do.	do.	do.		5,000
836	do.	do.	do.		5,000
838	do.	do.	do.		7,000
840	do.	do.	do.		7,000

Block 1046.

329	West 55th Street, Subject to lease.....			$8,000
331	do.	do.	do.	8,000
333	do.	do.	do.	8,000
347	do.	do.	do.	9,500
349	do.	do.	do.	9,500
351	do.	do.	do.	9,500
353	do.	do.	do.	9,500
355	do.	do.	do.	9,500
357	do.	do.	do.	9,500
359	do.	do.	do.	9,500
361	do.	do.	do.	9,500
363	do.	do.	do.	9,500
365	do.	do.	do.	9,500
842, 844, 846, 848, 850	9th Avenue plot,	do.	do.	50,000
371, 373, 375	West 55th Street, Subject to lease,			

Block 1064.

831	Ninth Avenue, Subject to lease.....			7,500
833	do.	do.	do.	7,500
835	do.	do.	do.	7,500
837	do.	do.	do.	7,500
839	do.	do.	do.	9,500
402	West 55th Street,	do.	do.	7,500
404	do.	do.	do.	8,500
406	do.	do.	do.	8,500
408	do.	do.	do.	4,500
410	do.	do.	do.	4,500
412	do.	do.	do.	6,000

414	do.	do.	do.	6,000
416	do.	do.	do.	5,500
418	do.	do.	do.	5,400
420	do.	do.	do.	5,200
430 to 432	do.	plot 6½ lots, vacant		45,500
452 West 55th Street. Subject to lease				7,000
454	do.	do.	do.	7,000
456	do.	do.	do.	7,000
828 Tenth Avenue, with old building				7,000

Block 1065.

841 Ninth Avenue, Subject to lease				9,000
843	do.	do.	do.	7,000
845	do.	do.	do.	7,000
849 } 851 }	do.	do.	do.	25,000
403 West 55th Street,	do.	do.	do.	4,000
405	do.	do.	do.	3,800
407	do.	do.	do.	6,000
409	do.	vacant lot		6,000
411	do.	do.		10,500
413	do.	do.		7,650
415	do.	do.		7,650
417	do.	do.		7,500
419	do.	do.		7,500
421	do.	do.		7,500
421A	do.	do.		500
423 West 55th Street,	Vacant lot			7,000
423A	do.	do.		525
425	do.	do.		7,000
425A	do.	do.		550
427	do.	do.		7,000
427A	do.	do.		575
429	do.	do.		7,000

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431 West 55th Street,	Vacant lot			7,000
433	do.	do.		7,000
435	do.	do.		7,000
437	do.	do.		7,000
439	do.	do.		7,000
441	do.	do.		7,000
443	do.	do.		7,000
445	do.	do.		7,000
447	do.	do.		7,000
449	do.	do.		7,000
451	do.	do.		7,000
453	do.	do.		7,000
834 to 840 Tenth Avenue, with old buildings				45,000
842 to 848 Plot Tenth Ave., old buildings				30,000

434	West 56th Street,	with old buildings	7,000
436	do.	Vacant lot	7,000
438	do.	do.	7,000
440	do.	with old building	7,000
446	do.	Vacant lot	5,000
450	do.	do.	7,000

Block 1084.

831	Tenth Avenue,	Subject to lease	12,000
833	do.	do.	8,500
835	do.	do.	8,500
837	do.	do.	8,500
839	do.	do.	8,500
841	do.	do.	8,500
843	do.	do.	8,500
845	do.	do.	8,500
847	do.	do.	8,500
849	do.	do.	11,250
503	West 55th Street,	Subject to lease	5,000
505–507	do.	do.	12,000
509	do.	do.	6,000
511	do.	do.	6,000
513	do.	do.	6,000
515	do.	with old building	5,000
517	do.	do.	5,000
519	do.	Subject to lease	5,000
521 523 525	West 55th Street, do. do.	3 vacant lots	15,000
527 529 531	do. do. do.	Subject to lease	15,000

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533 535	West 55th Street, do.	Subject to lease	9,000
537 539	do. do.	do. do.	9,000
541	do.	Vacant	4,500
543	do.	do.	4,500
792 794 796 798	Eleventh Ave. plot, about 3½ vacant lots		22,000
800	Eleventh Avenue,	Subject to lease	6,250
802 & 804	do.	do. do.	14,000

545 West 55th Street, 547 do. 549 do. 551 do.	Subject to lease	35,000
546 West 56th Street, 548 do. 550 do.		
544 do.	vacant	4,500
542 do.	do.	4,500
540 do.	do.	4,500
538 do.	Subject to lease	4,500
536 do.	do. do.	4,500
534 do.	do. do.	4,500
532 West 56th Street,	vacant	4,500
530 do.	do.	4,500
528 do.	Subject to lease	5,000
526 do.	vacant	5,000
524 do.	do.	5,000
522 do.	do.	5,000
520 do.	do.	5,000
518 West 56th Street,	vacant	5,000
516 do.	do.	5,000
514 do.	do.	5,000
512 do.	Subject to lease	6,000
510 do.	do. do.	6,000
508 do.	vacant	6,000
506 do.	do.	6,000
504 do.	Subject to lease	6,500
502 do.	do. do.	5,000

Block 1085.

806 Eleventh Ave., with gore, Subject to lease	9,000

Block 1103.

793 Eleventh Ave., with gore, vacant	10,000
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795 Eleventh Ave., Subject to lease	6,000
797 Eleventh Ave., 799 do., 801 do., 602 & 602A West 56th St., Subject to lease	22,500
604, 604A West 56th Street, Vacant	3,000
606, 606A do. do.	3,000
608 do.	
610 do. with Gore irregular, Vacant	1,200

Block 1104.

Northwest corner 56th St. and Eleventh Ave., Vacant	14,000

6. Parcels of land of irregular shape known as the Cozine Gores, and immediately adjoining certain lots of the Cozine Farm, being real property devised by the Fourth Clause of the Third Codicil of the Will of William B. Astor.

Property at the southwest corner of Tenth Avenue and 56th Street, described in the deed from Livingston Livingston, Referee, to William B. Astor, dated Oct. 27th, 1864, and recorded in New York County in Liber 921 of Conveyances, at page 183, valued by me at..... $750

Property on the northerly side of West 54th Street, distant 425 feet eastwardly from Ninth Avenue, described in a deed from Jonas Sparks and wife to William B. Astor, dated May 22, 1863, and recorded in New York County in Liber 876 of Conveyances, at page 392, valued by me at 7,400

Property on the northerly side of West 54th Street, commencing 350 feet eastwardly from Ninth Avenue, described in a deed from Peter B. Amory and wife to William B. Astor, dated April 15, 1863, and recorded in New York County in Liber 876 of Conveyances, at page 390, valued by me at..... 13,200

ALFRED E. MARLING.

Sworn to before me this 3rd day of December, 1903.

ELI G. PARTRIDGE,
Notary Public, New York County.

167. EXHIBIT G.

(Same as Exhibit F, *supra.*)

Notice of Appeal to Court of Appeals.

Surrogates' Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

GENTLEMEN: Please take notice that John Hubert de Stuers, Margaret de Stuers Oberndorff (formerly Margaret de Stuers), Hubert de Stuers, John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and the Union Trust Company as Trustee for the said John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and their children,

Arthur Astor Carey, and the infants, Laura Astor Chanler,
168 Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by Egerton L. Winthrop, Jr., their special guardian; the infants Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Junior, and Hester Alida Emmet, by Grenville T. Emmet, their special guardian; the infants Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, Second, by Bronson Winthrop, their special guardian, persons interested in the property appointed by Laura A. Delano, in her last Will and Testament, under and by virtue of certain powers of appointment, created as follows:

(1.) A power of appointment created by William B. Astor, by deed dated September 30, 1848;

(2.) A power of appointment created by William B. Astor, by deed dated September 10, 1844;

(3.) A power of appointment created by William B. Astor, by deed dated October 28, 1865;

(4.) A power of appointment created by William B. Astor, by deed dated September 6, 1849;

hereby appeal to the Court of Appeals of the State of New York from an order of the Supreme Court, Appellate Division, First Department, entered herein and filed in the office of the Surrogates' Court of New York County on the 24th day of June, 1905, affirming an order of Honorable Frank T. Fitzgerald, one of the Surrogates of said County, made and entered herein March 22, 1905, which said order of March 22, 1905, affirmed an order theretofore made and entered herein December 11, 1903, fixing the tax upon the estate of the said decedent, under the act relating to taxable transfers, upon the following grounds to wit:

169 (1.) That Chapter 284 of the Laws of 1897, does not apply to the property so appointed to these appellants for the reason that said property was acquired by them under deeds made in the years 1844, 1848, 1849 and 1865.

(2.) That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interest of the appellants herein, is unconstitutional and void, and that it is repugnant to Section 10, Article II of the Constitution of the United States, in that it impairs the obligation of contracts between William B. Astor and the appellants herein.

(3.) That Article X of Chapter 908, Laws of 1896, and the amendments thereto, as applied to the rights and interests of the appellants, is unconstitutional and void as being repugnant to Section I of the XIV Amendment of the Constitution of the United States in that it seeks to deprive citizens of property without due process of law, and to deny to persons affected thereby the equal protection of the laws.

(4.) That such portions of the property transfered by said deeds of 1844, 1848, 1849 and 1865 as were, under the terms of any of said

deeds granted to any of the said appellants on failure of appointment by said Laura A. Delano are not subject to any tax herein.

(5.) That if the property appointed to, or in trust for, any of the appellants herein under the terms of said deeds of 1844, 1848, 1849 and 1865, is held to be subject to a tax herein, such tax should be fixed with respect to the relationship of the appellants
170 herein to William B. Astor and not with respect to their relationship to the said Laura Astor Delano.

Dated New York, July 10, 1905.

ROOSEVELT & KOBBE,
Attorneys for Arthur Astor Carey,
44 Wall Street, New York City.

MORRIS, SENTELL & MAIN
Attorneys for Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, 16 Exchange Place, New York City.

EVARTS, TRACY & SHERMAN,
Attorneys for Thos. T. Sherman, as Committee for John Armstrong Chanler, 52 Wall Street, New York City.

HOWARD MANSFIELD,
Attorney for John Hubert de Stuers, Margaret de Stuers Oberndorff and Hubert de Stuers, 49 Wall Street, New York City.

PECKHAM, MILLER & KING,
Attorneys for The Union Trust Company, as Trustee, 80 Broadway, New York City.

EGERTON L. WINTHROP, Jr.,
Special Guardian for the Infants Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler, and Chanler Armstrong Chapman, 48 Wall Street, New York City.

171 GRENVILLE T. EMMET,
Special Guardian for the Infants Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Jr., and Hester Alida Emmet, 52 Wall Street, New York City.

BRONSON WINTHROP,
Special Guardian for the Infants Dorothy Chanler, Lewis Stuyvesant Chanler, Jr., Alida Chanler and William Astor Chanler, Second, 32 Liberty Street, New York City.

To James A. Donnelly, Esq., Clerk of the Surrogates' Court, New York County.

Edward H. Fallows, Esq., Attorney for Comptroller of State of New York.

Henry De Forest Baldwin, Esq., Attorney for Executors of Laura A. Delano.

172 *Order of Appellate Division Appealed from.*

At a Term of the Appellate Division of the Supreme Court in and for the First Department, held at the Appellate Division Court House, in the County of New York, on the 9th day of June, 1905.

Present: Hon. Edward Patterson, Hon. Morgan J. O'Brien, Hon. Edward W. Hatch, Hon. Frank C. Laughlin, JJ.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

An appeal having been taken by John Hubert de Stuers, Margaret de Stuers Oberndorff (formerly Margaret de Stuers), Hubert de Stuers, John Armstrong Chanler, Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and the Union Trust Company as Trustee for the said John Armstrong Chanler, Winthrop Astor Chanler,
173 Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, and their Children, Arthur Astor Carey, and the infants, Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by Egerton L. Winthrop, Jr., their special guardian; the infants Elizabeth Winthrop Emmet, Mary Chanler Emmet, Christopher Temple Emmet, Junior, and Hester Alida Emmet, by Grenville T. Emmet, their special guardian; the infants Dorothy Chanler, Lewis Stuyvesant Chanler, Junior, Alida Chanler and William Astor Chanler, Second, by Bronson Winthrop, their special guardian, persons interested in the property appointed by Laura Astor Delano in her last will and testament, under and by virtue of certain powers of appointment, created as follows:

(1) A power of appointment created by William B. Astor, by deed dated September 30, 1848.

(2) A power of appointment created by William B. Astor, by deed dated September 10, 1844.

(3) A power of appointment created by William B. Astor, by deed dated October 28, 1865.

(4) A power of appointment created by William B. Astor, by deed dated September 6, 1849,

to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department from an order of Hon. Frank T. Fitzgerald, one of the Surrogates of the County of New York, made and entered herein on the 22nd day of
174 March, 1905, affirming the order theretofore made and entered herein on the 11th day of December, 1903, fixing a tax upon the estate of the said decedent under the act relating to tax-

able transfers as to the property appointed by said decedent in her last will and testament by virtue of said powers of appointment upon the certain grounds mentioned and set forth in their notice of appeal to this Court dated March 29th, 1905,

And said appeal having come on to be heard before this Court after hearing Lucius H. Beers, Esq.; of counsel for the Appellants, and George M. Judd, Esq., of counsel for the respondent, and due deliberation having been had;

Now, on motion of Edward H. Fallows, attorney for the State Comptroller, respondent, it is

Ordered and adjudged that the order appealed from be and the same hereby is affirmed with ten dollars costs and disbursements to the said respondent against the said appellants.

Enter,

M. J. O'B., *J. S. C.*

175 *Stipulation Waiving Certification.*

Court of Appeals.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

Pursuant to Section 2567 of the Code of Civil Procedure it is hereby stipulated that the foregoing are true copies of the notice of appeal to the Court of Appeals, the order of the Appellate Division appealed from and all the papers upon which the Courts below acted in this proceeding, and the whole thereof and now on file in the office of the Clerk of the Surrogates' Court of New York County, and certification thereof by the Clerk of said Court is hereby waived.

Dated New York, July 17, 1905.

ROOSEVELT & KOBBÉ,
Att'ys for Arthur Astor Carey.
MORRIS, SENTELL & MAIN,
Att'ys for Wm. Astor Chanler & Others.
EVARTS, TRACY & SHERMAN,
Att'ys for Thos. T. Sherman, as Committee for John Armstrong Chanler.
HOWARD MANSFIELD,
Att'y for John Hubert de Stuers and Others.
176 PECKHAM, MILLER & KING,
Att'ys for Union Trust Co. as Trustee.
E. L. WINTHROP, JR.,
Special Guardian for Laura Astor Chanler and Others.
GRENVILLE T. EMMET,
Special Guardian for Elizabeth Winthrop Emmet and Others.
BRONSON WINTHROP,
Special Guardian for Dorothy Chanler and Others.
HENRY DE FOREST BALDWIN,
Att'y for Executors of Laura A. Delano.
EDWARD H. FALLOWS,
Att'y for State Comptroller.

177 *Affidavit of No Opinions.*

Court of Appeals.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

CITY AND COUNTY OF NEW YORK, *ss:*

Lucius H. Beers, being duly sworn, says that he has acted as counsel for the appellants in this proceding since its institution and is familiar therewith; that in fixing the tax herein no opinion was given by Surrogate Thomas; in affirming the order fixing the tax, no opinion was given by Surrogate Fitzgerald; in affirming the order of affirmance of the Surrogates' Court no opinion was given by any one of the Justices of the Appellate Division.

LUCIUS H. BEERS.

Sworn to before me this 17th day of July, 1905.

DARIUS E. PECK,
Commissioner of Deeds, the City of New York.

178 *Order of Surrogate's Court on Remittitur.*

At a Surrogate's Court held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 18th day of January, 1906.

Present: Hon Abner C. Thomas, Surrogate.

In the Matter of the Transfer Tax upon the Estate of LAURA ASTOR DELANO, Deceased.

An order in this proceeding having been entered in this Court on the 22nd day of March, 1905, affirming an order of the same Court entered herein on the 11th day of December, 1903, assessing a transfer tax upon the transfer of property passing by virtue of the exercise by said decedent of certain powers of appointment;

And an appeal having been taken to the Appellate Division on the 29th day of March, 1905, and an order having been duly entered in the office of the clerk of said Court on the 9th day of June, 1905, affirming the order of the Surrogates Court appealed from;

179 And an appeal having been taken from said last mentioned order by the Appellants herein to the Court of Appeals on the 10th day of July, 1905, and said order of the Appellate Division having been affirmed, and a remittitur having been sent down from said Court and filed in this Court on the 14th day of December, 1905;

Now, on reading the said remittitur from the Court of Appeals and

on motion of Edward H. Fallows, attorney for the State Comptroller, respondent herein, it is

Ordered and adjudged that the order and judgment of the said Court of Appeals be, and the same is hereby made the order and judgment of this Court, and it is

Further ordered and adjudged that the respondent herein recover from the Appellants herein the sum of One hundred eighty-four and 35/100 Dollars, the amount of his costs and disbursements as taxed in this proceeding and that said respondent have execution therefor.

ABNER C. THOMAS, *Surrogate.*

180 [Endorsed:] Surrogate's Court, New York County. In the matter of the transfer tax upon the estate of Laura Astor Delano, deceased. Copy. Order. Edward H. Fallows, Attorney for State Comptroller, Office and P. O. Address, 170 Broadway, Manhattan, New York City.

181 Surrogate's Court of the State of New York, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

Assignment of Errors.

And now come the plaintiffs in error Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler and Alida Beekman Emmet, by Morris, Sentell & Main, their attorneys and counsel, and the plaintiff in error Thomas T. Sherman as Committee for John Armstrong Chanler, by his attorneys and counsel, Evarts, Tracy & Sherman, and they respectfully report that they feel themselves aggrieved by the proceedings, order and decree of the Court of Appeals of the State of New York and of the Surrogate's Court of the County of New in the above entitled cause made upon a remittitur from said Court of Appeals of the State of New York, which is the highest court of law and equity
182 of the said state in which a decision could be had and they assign error thereto as follows, that is to say:

First. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated September 10, 1844, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, by reason of the exercise of the power of appointment given by said deed to Laura Astor Delano, and erred in refusing to hold that the right to exercise such power of appointment was derived from the said deed of September 10, 1844, and not from a privilege given by the State of New York to the said Laura Astor Delano, and further erred in refusing to hold that the said statute, Chapter 284 of the Laws of 1897, as so construed by said Court, and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 10

of Article I of the Constitution of the United States, in that it impairs the obligation of a contract between the said William B. Astor and these plaintiffs in error which contract was made prior to the passage and enactment of said statute.

Second. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated September 10, 1844, were subject to taxation under the provisions of Chapter 284 of the Laws of 1897 of the State of New York,
183 and erred in refusing to hold that said estates in remainder were not subject to taxation under said Act because no owner of said estates in remainder had died since such estates in remainder were created by said deed of September 10, 1844, and in refusing to hold that the said Act (Chapter 284 of the Laws of 1897) as so construed by said Court and by the highest Court of the State of New York is unconstitutional and void, as being repugnant to Section I of the 14th Amendment to the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law and denies to them the equal protection of the laws.

Third. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated September 10, 1844, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that the appointment of said estates in remainder made by the said Laura Astor Delano was not a succession caused by the death of the owner of such estates in remainder, and that said Court further erred in refusing to hold that said Chapter 284 of the Laws of 1897 as construed by said Court and by the highest Court of the State of New York is unconstitutional and void, in that, as so construed by said Courts, it imposes a tax on the estates in re-
184 mainder owned by these plaintiffs in error by providing that the appointment of said estates in remainder by the said Laura Astor Delano "shall be deemed" a succession caused by the death of the owner of said estates in remainder, when the said estates in remainder were not in fact owned by the said Laura Astor Delano, and she did not in fact die seized of such estates, and in refusing to hold that the said statute Chapter 284 of the Laws of 1897 of the State of New York, as so construed and interposed by said Court, and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law.

Fourth. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated September 10, 1844, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that the appointment of said estates in remainder made by the said Laura Astor Delano was not a succession caused by the death of the owner of such estates in remainder, and that said Court further erred in refusing to hold that said Chapter 284 of the Laws of 1897

as construed by said Court and by the highest Court of the
185 State of New York, is unconstitutional and void, in that as so construed by said Courts, it imposes a tax on the estates in remainder owned by these plaintiffs in error by providing that the appointment of said estates in remainder by the said Laura Astor Delano shall be deemed a succession caused by the death of the owner of said estates in remainder "as though" said estates in remainder had "belonged absolutely" to the said Laura Astor Delano when said estates in remainder did not in fact belong to her and she did not die seized of them, and in refusing to hold that the said statute (Chapter 284 of the Laws of 1897 of the State of New York) as so construed and interpreted by said Courts and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law.

Fifth. That the Court erred in holding that such aliquot part of the estates in remainder transferred by the deed made by William B. Astor and dated September 10, 1844, as were, under the terms of said deed, granted to these plaintiffs in error on failure of appointment by the said Laura Astor Delano, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that such aliquot parts of said estates in remainder were not subject to taxation under said Act because title to
186 such aliquot parts was vested in these plaintiffs in error prior to the passage and enactment of said Chapter 284 of the Laws of 1897 of the State of New York, and was also vested in them without resort to the appointment made by the said Laura Astor Delano, and erred in refusing to hold that the said statute (Chapter 284 of the Laws of 1897) as construed by said Court and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of a contract between William B. Astor and these plaintiffs in error which contract was made prior to the passage and enactment of said statute, and erred in refusing to hold that said act as so construed by said Courts, is further unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law.

And now comes the plaintiff in error Arthur Astor Carey by Roosevelt & Kobbe, his attorneys and counsel and respectfully reports that he feels himself aggrieved by the proceedings, order and decree of the Surrogates' Court of the County of New York in the above entitled cause made upon the remittitur of the Court of Appeals of the State of New York, which is the highest Court of
187 law and equity of the said State in which a decision could be had and assigns error thereto as follows, that is to say:

First. That the Court erred in holding that the estates in remainder created by the deeds made by William B. Astor and dated September 30, 1848 and September 6, 1849, respectively, were subject to

taxation under Chapter 284 of the Laws of 1897 of the State of New York, by reason of the exercise of the powers of appointment given by said deeds to Laura Astor Delano, and erred in refusing to hold that the right to exercise such powers of appointment was derived from the said deeds of September 30, 1848, and September 6, 1849, and not from a privilege given by the State of New York to the said Laura Astor Delano, and further erred in refusing to hold that the said statute, Chapter 284 of the Laws of 1897, as so construed by said Court, and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of contracts between the said William B. Astor and this plaintiff in error which contracts were made prior to the passage nad enactment of said statute.

Second. That the Court erred in holding that the estates in remainder created by the deeds made by William B. Astor and
188 dated September 30, 1848, and September 6, 1849, respectively, were subject to taxation under the provisions of Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that said estates in remainder were not subject to taxation under said Act because no owner of said estates in remainder had died since such estates in remainder were created by said deeds of September 30, 1848, and September 6, 1849, and in refusing to hold that the said Act (Chapter 284 of the Laws of 1897), as so construed by said Court and by the highest Court of the State of New York is unconstitutional and void, as being repugnant to Section 7 of the 14th Amendment to the Constitution of the United States, in that it deprives this plaintiff in error of his property without due process of law and denies to him the equal protection of the laws.

Third. That the Court erred in holding that the estates in remainder created by the deeds made by William B. Astor and dated September 30, 1848, and September 6, 1849, respectively, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that the appointment of said estates in remainder made by the said Laura Astor Delano was not a succession caused by the death of the owner of such estates in remainder, and that said Court further erred in refusing to
189 hold that said Chapter 284 of the Laws of 1897 as construed by said Court and by the highest Court of the State of New York is unconstitutional and void, in that, as so construed by said Court, it imposes a tax on the estates in remainder owned by this plaintiff in error by providing that the appointment of said estates in remainder by the said Laura Astor Delano "shall be deemed" a succession caused by the death of the owner of said estates in remainder, when the said estates in remainder were not in fact owned by the said Laura Astor Delano, and she did not in fact die seized of such estates, and in refusing to hold that the said statute Chapter 284 of the Laws of 1897 of the State of New York, as so construed and interpreted by said Court, and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment of the Constitution of the United

States, in that it deprives this plaintiff in error of his property without due process of law.

Fourth. That the Court erred in holding that the estates in remainder created by the deeds made by William B. Astor and dated September 30, 1848, and September 6, 1849, respectively, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that the appointment of said estates in remainder made by the said Laura Astor
190 Delano was not a succession caused by the death of the owner of such estates in remainder, and that said Court further erred in refusing to hold that said Chapter 284 of the Laws of 1897 as construed by said Court and by the highest Court of the State of New York, is unconstitutional and void, in that, as so construed by said Court, it imposes a tax on the estates in remainder owned by this plaintiff in error by providing that the appointment of said estates in remainder by the said Laura Astor Delano shall be deemed a succession caused by the death of the owner of said estates in remainder "as though" said estates in remainder had "belonged absolutely" to the said Laura Astor Delano when said estates in remainder did not in fact belong to her and she did not die seized of them, and in refusing to hold that the said statute (Chapter 284 of the Laws of 1897 of the State of New York) as so construed and interpreted by said Court and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives this plaintiff in error of his property without due process of law.

Fifth. That the Court erred in holding that such aliquot part of the estates in remainder transferred by the deeds made by William B. Astor and dated September 30, 1848, and September 6, 1849, as were, under the terms of said deed, granted to this plaintiff in
191 error on failure of appointment by the said Laura Astor Delano, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that such aliquot parts of said estates in remainder were not subject to taxation under said Act because title to such aliquot parts was vested in this plaintiff in error prior to the passage and enactment of said Chapter 284 of the Laws of 1897 of the State of New York, and was also vested in him without resort to the appointment made by the said Laura Astor Delano, and erred in refusing to hold that the said statute (Chapter 284 of the Laws of 1897) as construed by said Court and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of contracts between William B. Astor and this plaintiff in error which contracts were made prior to the passage and enactment of said statute, and erred in refusing to hold that said act as so construed by said Courts, is further unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives this plainiff in error of his property without due process of law.

192 And now come the plaintiffs in error John Hubert de Stuers, Margaret de Stuers Oberndorff and Hubert de Stuers, by Howard Mansfield, their attorney and counsel, and the plaintiffs in error Winthrop Astor Chanler and Elizabeth Winthrop Chapman, by Morris, Sentell & Main, their attorneys and counsel, and the plaintiff in error Thomas T. Sherman, as Committee for John Armstrong Chanler, by Evarts, Tracy & Sherman, his attorneys and counsel, and the plaintiffs in error the infants Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by Egerton L. Winthrop, Jr., their special guardian, and said plaintiffs in error respectfully report that they feel aggrieved by the proceedings, order and decree of the Surrogates' Court of the County of New York in the above entitled cause, which is made upon a remittitur from the Court of Appeals of the State of New York, which is the highest Court of law and equity of said State, in which a decision could be had and assign error thereto as follows, that is to say:

First. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated October 28, 1865, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, by reason of the
193 exercise of the power of appointment given by said deed to Laura Astor Delano, and erred in refusing to hold that the right to exercise such power of appointment was derived from the said deed of October 28, 1865, and not from a privilege given by the State of New York to the said Laura Astor Delano, and further erred in refusing to hold that the said statute, Chapter 284 of the Laws of 1897, as so construed by said Court, and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of a contract between the said William B. Astor and these plaintiffs in error which contract was made prior to the passage and enactment of said statute.

Second. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated October 28, 1865, were subject to taxation under the provisions of Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that said estates in remainder were not subject to taxation under said Act because no owner of said estates in remainder had died since such estates in remainder were created by said deed of October 28, 1865, and in refusing to hold that the said Act (Chapter 284 of the Laws of 1897) as so construed
194 by said Court and by the highest Court of the State of New York is unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law and denies to them the equal protection of the laws.

Third. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated October 28, 1865, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that the appointment of said estates in remainder made by the said Laura Astor Delano was not a succession caused by the death of the owner of such estates in remainder, and that said Court further erred in refusing to hold that said Chapter 284 of the Laws of 1897 as construed by said Court and by the highest Court of the State of New York is unconstitutional and void, in that, as so construed by said Courts, it imposes a tax on the estates in remainder owned by these plaintiffs in error by providing that the appointment of said estates in remainder by the said Laura Astor Delano "shall be deemed" a succession caused by the death of the owner of said estates in remainder, when the said estates in remainder were not in fact owned by the said Laura Astor Delano, and she did not in fact die seized of such estates, and in refusing
195 to hold that the said statute 284 of the Laws of 1897 of the State of New York, as so construed and interpreted by said Courts, is unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law.

Fourth. That the Court erred in holding that the estates in remainder created by the deed made by William B. Astor and dated October 28, 1865, were subject to taxation under Chapter 284 of the Laws of 1897 of the State of New York, and erred in refusing to hold that the appointment of said estates in remainder made by the said Laura Astor Delano was not a succession caused by the death of the owner of such estates in remainder, and that said Court further erred in refusing to hold that said Chapter 284 of the Laws of 1897 as construed by said Court and by the highest Court of the State of New York, is unconstitutional and void, in that, as so construed by said Courts, it imposes a tax on the estates in remainder owned by these plaintiffs in error by providing that the appointment of said estates in remainder by the said Laura Astor Delano shall be deemed a succession caused by the death of the owner of said estates in remainder "as though" said estates in remainder had "belonged absolutely" to the said Laura Astor
196 Delano when said estates in remainder did not in fact belong to her and she did not die seized of them, and in refusing to hold that the said Statute (Chapter 284 of the Laws of 1897 of the State of New York) as so construed and interpreted by said Court and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law.

Wherefore the said plaintiffs in error Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop

Chanler, Alida Beekman Emmet, Thomas T. Sherman, as Committee for John Armstrong Chanler, Arthur Astor Carey, John Hubert de Stuers, Margaret de Stuers Oberndorff and Hubert de Stuers, and the infants Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by their special guardian Egerton L. Winthrop, Jr., pray that the United States Supreme Court examine and correct the errors assigned for the reversal of the judgment and decision herein of the Court of Appeals of the
197 State of New York, and the judgment and decree rendered by the Surrogates' Court of the County and State of New York on the remittitur of the said Court of Appeals of the said State of New York and dismiss said proceeding.

Dated, March 15, 1906.

MORRIS, SENTELL & MAIN,
Attorneys for Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet.

EVARTS, TRACY & SHERMAN,
Attorneys for Thomas T. Sherman, as Committee for John Armstrong Chanler.

ROOSEVELT & KOBBE,
Attorneys for Arthur Astor Carey.

HOWARD MANSFIELD,
Attorney for John Hubert de Stuers, Margaret de Stuers Oberndorff, and Hubert de Stuers.

EGERTON L. WINTHROP, JR.,
Special Guardian for Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler, and Chanler Armstrong Chapman.

LUCIUS H. BEERS,
LUCIUS H. BEERS,
Of Counsel.

198 [Endorsed:] Surrogates' Court of the State of New York, New York County. In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of Property of the Property of Laura Astor Delano, deceased. Assignment of Errors. Lucius H. Beers, Counsel for plaintiffs in error, 49 Wall Street, New York City. Filed March 22, 1906.

199 *Petition for Writ of Error.*

UNITED STATES OF AMERICA, *State of New York:*

To the Hon. Rufus W. Peckham, Associate Justice of the Supreme Court of the United States:

And now come your petitioners Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, and Alida Beekman Emmet, by Morris, Sentell & Main, their attorneys and counsel; Thomas T. Sherman, as Committee for John Armstrong Chanler, by his attorneys and counsel, Evarts, Tracy & Sherman; Arthur Astor Carey, by Roosevelt & Kobbe, his attorneys and counsel; and John Hubert de Stuers, Margaret de Stuers Oberndorff and Hubert de Stuers, by Howard Mansfield, their attorney and counsel; and Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by Egerton L. Winthrop, their special guardian, and show that in the record and proceedings had in the Court of Appeals of the State of New York, in the
200 proceeding entitled "In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of Property of the Property of Laura Astor Delano, deceased," and in the rendition of a judgment and order by said Court of Appeals and in the rendition of a judgment and order by the Surrogates' Court of the County and State of New York, upon a remittitur from the said Court of Appeals of the State of New York, making the judgment and order of said Court of Appeals the judgment and order of said Surrogates' Court, manifest error hath happened to the great damage of your petitioners.

The record and proceedings of said proceeding is now in the said Surrogates' Court of the County of New York, in the State of New York, on the said remittitur from the said Court of Appeals of the State of New York.

Said Court of Appeals is the highest court of law and equity in the said State in which a decision could be had in said proceeding.

By said remittitur said Court of Appeals remitted to the Surrogates' Court of the County of New York the records and proceedings had in said Court in said proceeding to be proceeded upon by said Surrogates' Court, according to law, with an order affirming an order and decree theretofore rendered in the Appellate Divis-
201 ion of the Supreme Court of the State of New York on the 24th day of June, 1905, affirming an order of said Surrogates' Court made and entered March 22, 1905, which said order of March 22, 1905, affirmed an order made and entered in said Surrogates' Court on December 11, 1903, in favor of Otto Kelsey, Comptroller of the State of New York, and against your petitioners. Upon said direction and order of the Court of Appeals a decree of affirmance was entered in said Surrogates' Court of the County of New

York on the 18th day of January, 1906, making the judgment and order of the Court of Appeals the judgment and order of said Surrogates' Court, with costs.

By said judgment and order there was drawn in question the validity of a statute of the State of New York and of an authority exercised thereunder on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, and therein titles, rights, privileges and immunities were claimed under the Constitution of the United States and the decision was against the titles, rights privileges and immunities so set up and claimed, all of which appears in the record and
202 proceedings in said proceeding, which is submitted herewith.

Your petitioners claim the right to remove said judgment and order to the Supreme Court of the United States by writ of error under Section 709 of the Revised Statutes of the United States.

Wherefore your petitioners, the said Winthrop Astor Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, Thomas T. Sherman, as Committee for John Armstrong Chanler, Arthur Astor Carey, John Hubert de Stuers, Margaret de Stuers Oberndorff and Hubert de Stuers, and the infants Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, Theodore Ward Chanler and Chanler Armstrong Chapman, by their special guardian, pray for the reversal of said judgment and order of the Court of Appeals and of the said judgment and order of the Surrogates' Court and for the allowance of a writ of error and such other proceedings as may cause the said judgment and order to be corrected by the Supreme Court of the United States.

Dated March 16, 1906.

MORRIS, SENTELL & MAIN,
Attorneys for Winthrop Astor Chanler and Others.

203 EVARTS, TRACY & SHERMAN,
Attorneys for Thos. T. Sherman, as Committee for J. A. Chanler.

ROOSEVELT & KOBBE,
Attorneys for Arthur Astor Carey.

HOWARD MANSFIELD,
Attorneys for J. H. de Stuers and Others.

EGERTON L. WINTHROP,
Special Guardian for Laura A. Chanler and Others,
Attorney, in Person.

LUCIUS H. BEERS,
Of Counsel.

Let the Writ of Error issue as prayed and the bond for that purpose is fixed at the sum of $1,000.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

M'ch 16, 1906.

204 [Endorsed:] U. S. Supreme Court. Winthrop Astor Chanler and others, Plaintiffs in Error, against Otto Kelsey, State Comptroller, Defendant in Error. Petition for Writ of Error. Lucius H. Beers, Counsel for Plaintiffs in Error, 49 Wall Street, New York. Filed March 22, 1906.

205 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Surrogates of the Surrogates' Court of the County of New York, State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Surrogates' Court of the County of New York, State of New York, before you, or some of you, upon a remittitur from the Court of Appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in the said proceeding entitled "In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of Property of the Property of Laura Astor Delano, deceased," wherein was drawn in question the validity of a statute and of an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity; and wherein
206 was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, and exemption specially set up and claimed under such clause of the said Constitution; a manifest error hath happened to the great damage of the said Winthrop Astor Chanler, Thomas T. Sherman, as Committee for John Armstrong Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, Arthur Astor Carey, John Hubert de Stuers, Margaret de Stuers Oberndorff, Hubert de Stuers, Chanler Armstrong Chapman, Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, and Theodore Ward Chanler as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Su-
207 preme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16 day of March, in the year of *of* our Lord one thousand nine hundred and six.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

208 [Endorsed:] United State- Supreme Court. Winthrop Astor Chanler, and others, Plaintiffs in Error, against Otto Kelsey, Defendant in Error. Writ of Error. Lucius H. Beers, Counsel for Plaintiffs in Error, 49 Wall Street, New York. Filed March 22, 1906.

209 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Otto Kelsey, Comptroller of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Surrogates' Court of the County of New York, State of New York, wherein Winthrop Astor Chanler, Thomas T. Sherman as Committee for John Armstrong Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, Arthur Astor Carey, John Hubert de Stuers, Margaret de Stuers Oberndorff, Hubert de Stuers, Chanler Armstrong Chapman, Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler and Theodore Ward Chanler, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, Associate
210 Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord one thousand nine hundred and six.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Service of citation admitted.
N. Y. Mch. 21st 1906.

EDWARD H. FALLOWS,
Attorney for Comptroller of the State of New York.

211 [Endorsed:] United States Supreme Court. Winthrop Astor Chanler, and others, Plaintiffs in Error, against Otto Kelsey, Defendant in Error. Citation. Lucius H. Beers, Counsel for Plaintiffs in Error, 49 Wall Street, New York. Filed March 22, 1906.

212 *Bond on Writ of Error.*

Know all men by these presents: That the Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland duly authorized to transact the business of indemnity and suretyship, and having an office and principal place of business for the State of New York at No. 35 Wall Street, in the Borough of Manhattan, in the City of New York, is held and firmly bound unto Otto Kelsey, State Comptroller of the State of New York, in the full and just sum of One Thousand Dollars ($1000.00), to be paid to the said Otto Kelsey, State Comptroller, his successors and assigns, to which payment, well and truly to be made, the said Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seal. Dated this twenty-fourth day of February, in the year of our Lord One thousand nine hundred and six.

Whereas, lately at a Surrogate's Court in the County and State of New York in a proceeding pending in said Court entitled: "In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of Property of the Property of Laura Astor Delano, deceased" a judgment and decree was rendered on a remittitur from the Court of Appeals of said State, and Winthrop Astor Chanler, Thomas T. Sherman as Committee for John Armstrong Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, Arthur Astor Carey, John Hubert de Stuers, Margaret de Stuers Oberndorff, Hubert de Stuers, Chanler Armstrong Chapman, Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler and Theodore Ward Chanler, having obtained a writ of error and filed a copy thereof in the Clerk's Office of said Court, to reverse the judgment in
213 the aforesaid proceeding, and a citation directed to the said Otto Kelsey, State Comptroller, citing and admonishing him to be and appear at a Supreme Court of the United States at Washington, within thirty (30) days from the date thereof;

Now, the condition of the above obligation is such, that if the said Winthrop Astor Chanler, Thomas T. Sherman, as Committee for John Armstrong Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, Arthur Astor Carey, John Hubert de Stuers, Margaret de Stuers Oberndorff, Hubert de Stuers, Chanler Armstrong Chapman, Laura Astor Chanler, Beatrice Margaret Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop

Chanler, and Theodore Ward Chanler shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By HUGH M. ALLWOOD, *Attorney-in-fact.*

Attest:
[SEAL.] JAMES R. KINGSLEY, *Attorney-in-fact.*

214 STATE OF NEW YORK, *County of New York, ss:*

On the twenty-fourth day of February, in the year 1906, before me personally came James R. Kingsley, to me known, who, being by me duly sworn, did depose and say, that he resided in the City of New York; that he is the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 3, of Chapter 720, of the Session Laws of the State of New York, for the year 1893. And the said James R. Kingsley further said that he was acquainted with Hugh M. Allwood, and knew him to be the Attorney-in-Fact of said Company; that the signature of the said Hugh M. Allwood, subscribed to the within instrument, was in the genuine handwriting of the said Hugh M. Allwood, and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said James R. Kingsley.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

At a regular and lawful meeting of the Board of Directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the Company, in the City of Baltimore, State of Maryland, on the sixth day of March, 1901, on motion, it was unanimously

"*Resolved*, That in pursuance of Section eight hundred and eleven "of the Code of Civil Procedure of the State of New York, Henry B. "Platt, Vice-President, or George Sewell Bonner, Attorney, or Frank "H. Platt, Edward T. Platt, Joseph A. Flynn, Hugh M. Allwood "and James R. Kingsley, Attorneys-in-Fact of this Company, in the "State of New York, be, and each of them is, hereby authorized and "empowered to sign, execute and deliver any and all bonds or under-"takings for or on behalf of this Company, and to attach thereto the "seal of the corporation, the same to be attested by the said George "Sewell Bonner, Attorney of the Company, or by either one of the "other persons above named, as occasion may require."

County of New York, ss:

I, James R. Kingsley, Attorney-in-fact of the Fidelity and Deposit Company, of Maryland, have compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original Resolution. Given under my hand and the seal of the Company, at the City of New York, this 24th day of February, 1906.

[SEAL.] JAMES R. KINGSLEY,
Attorney-in-Fact.

Fidelity and Deposit Company of Maryland.

Statement, December 30th, 1905.

Resources.		Liabilities.	
Real Estate.....	$757,000 00	Capital Stock.....	$2,000,000 00
Stocks and Bonds.	3,451,925 00	Surplus and Undivided Profits..	2,726,700 56
Railroad Bonds...	1,231,250 00	Premium Reserve Requirement.	718,091 62
British Consols....	239,500 00	Reserve for Contingent Claims..	664,787 60
Net Premiums Due	102,875 62	Claims Adjusted (Checks out)..	5,015 48
Cash in Bank, etc.	367,943 19	Claims in Process of Adjustment	35,898 55
	$6,150,493 81		$6,150,493 81

STATE OF NEW YORK, *County of New York, ss:*

James R. Kingsley, being duly sworn, says that he is the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said Company, as of December 30th, 1905, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 24th day of February, 1906.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

215 [Endorsed:] United States Supreme Court. Winthrop Astor Chanler and others, Plaintiffs in Error, *vs.* Otto Kelsey, Defendant in Error. Copy. Bond. Approved by R. W. Peckham, Associate Justice of the Supreme Court of the United States. Not to operate as a supersedeas. M'ch 16, 1906. Fidelity and Deposit Company of Maryland, 35 Wall Street, New York.

216 *Certification.*

STATE OF NEW YORK, *County of New York, ss:*

I, Daniel J. Dowdney, Clerk of the Surrogates' Court of New York County, do hereby certify that the foregoing record of Papers on Appeal to the Court of Appeals of the State of New York, and the remittitur issued by and from said Court of Appeals all in the proceeding entitled "In the Matter of the Appraisal under the Act in relation to Taxable Transfers of Property of the Property of Laura Astor Delano, Deceased," are the originals thereof filed in the Office of this Court and that I have compared the copy of the order of the Surrogates' Court made upon and pursuant to said remittitur, thereto attached with the original thereof filed in the Office of this Court, and have found the same is a true and correct copy of such original; that attached to said papers are the assignment of errors, the petition for a writ of error with allowance thereof and the amount of security fixed thereon, the writ of error with allowance thereon, the citation with acceptance of service thereof, filed in the Office of this Court, and the same are the originals thereof; that I have compared the copy of the bond on writ of error, attached to said papers with the original thereof on file in the office of this Court, and find the same to be *to be* a true copy of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the Surrogates' Court of the County of New York this Twenty second day of March in the year of our Lord one thousand nine hundred and six.

[New York Surrogate's Seal.]

DANIEL J. DOWDNEY,
Clerk of the Surrogates' Court.

217 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, Clerk of the Court of Appeals of the said State of New York, do hereby certify that no opinion was handed down by the Court of Appeals on affirming, December 12, 1905, the order of the Appellate Division of the Supreme Court affirming the order of the Surrogate fixing the tax under the act in relation to taxable transfers of property, in the Matter of the Estate of Laura Astor Delano, deceased.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at the City of Albany, this first day of February, A. D., 1906.

[Seal State of New York, Court of Appeals.]

W. H. SHANKLAND, *Clerk.*

218 United States Supreme Court.

In Error to the Surrogates' Court of New York County.

WINTHROP ASTOR CHANLER, THOMAS T. SHERMAN, as Committee for John Armstrong Chanler, Elizabeth Winthrop Chapman, William Astor Chanler, Lewis Stuyvesant Chanler, Margaret Livingston Chanler, Robert Winthrop Chanler, Alida Beekman Emmet, Arthur Astor Carey, John Hubert de Stuers, Margaret de Stuers Oberndorff, Hubert de Stuers, Chanler Armstrong Chapman, Laura Astor Chanler, Beatrice Margaret Mary Chanler, Hester Marion Chanler, Marion Winthrop Chanler, May Margaret Gabrielle Chanler, Hubert Winthrop Chanler, and Theodore Ward Chanler, Plaintiffs in Error,

against

OTTO KELSEY, Comptroller of the State of New York, Defendant in Error.

Surrogates' Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of LAURA ASTOR DELANO, Deceased.

It is hereby stipulated and agreed that the annexed certified copy of the opinion of the Court of Appeals of the State of New York in the Matter of Delano reported in 176 N. Y. page 486, and the
219 annexed certified copy of the opinion of the Appellate Division of the Supreme Court in the same case reported in 82 App. Div. page 147, be included in the record of the United States Supreme Court herein, said opinions having been given by said Court of Appeals and said Appellate Division, respectively, upon an application made by Arthur Astor Carey, one of the plaintiffs in error herein, to have this proceeding dismissed as to him. No opinion was given by the Surrogate upon such application.

March 21st, 1906.

LUCIUS H. BEERS,
Counsel for Plaintiffs in Error.
EDWARD H. FALLOWS,
Attorney for Comptroller of the State of New York.

220 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, Clerk of the Court of Appeals of the said State of New York, do hereby certify that I have compared the annexed copy of the opinion of the Court of Appeals in the Matter &c. of the Estate of Laura Astor Delano, deceased, with the official report thereof in Volume 176 of New York Reports on file in this office,

and that the same is a correct transcript therefrom, and of the whole of said opinion.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the City of Albany, this first day of February, A. D., 1906.

[Seal State of New York, Court of Appeals.]

W. H. SHANKLAND, *Clerk.*

221 *Opinion of Court of Appeals in Matter of Delano* (176 *N. Y.* 486.)

In the Matter of the Transfer Tax upon the Property Transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO.

(Decided November 24, 1903.)

Appeal from an order of the Appellate Divison of the Supreme Court in the first judicial department reversing an order of the surrogate of the county of New York and dismissing the proceeding as to Arthur Astor Carey.

The facts appear in the opinion.

George M. Judd for appellant.

Lucius H. Beers for respondent.

VANN, *J.:*

This appeal presents the question whether the legislature is prohibited by the Constitution, State or Federal, from passing an act to impose a transfer tax upon the exercise, by a last will and testament, of a power of appointment derived from a deed, executed before the passage of any statute imposing a tax upon the right of succession to the property of a decedent.

The facts out of which this question arose are as follows: On the 30th of September, 1848, William B. Astor owned a house and lot on Lafayette place, in the city of New York, and on that day he conveyed the same to his daughter, Mrs. Laura Delano, for life, and upon her death, without issue, to her brothers and her sister Alida, or their issue as they might then survive, *per stirpes.*

222 By the same deed he conferred upon Mrs. Delano a power of appointment, to be exercised, in her discretion, by an instrument "in its nature testamentary," in such a manner as "to give the said land and premises, or any share or part thereof, to and amongst her said * * * brothers and sister Alida, or their issue, in such manner and proportions as she may appoint."

On the 6th day of September, 1849, said William B. Astor transferred certificates of the public debt of the state of Ohio, amounting to $50,000, to James Gallatin and another in trust to receive the income and apply it to the use of his daughter Laura during her life, and upon her death without issue to transfer "the capital of the said stock * * * to her surviving brothers and sister Alida" or their

issue then surviving. This gift was also subject to a power of appointment created by the trust deed, whereby the said Laura was authorized "by any instrument duly executed as a will of personal estate to dispose of said capital into and amongst her * * * brothers, sister and their issue in such shares and proportions as she may think fit and upon such limitations, by the way of trust or otherwise, as in her discretion may be lawfully devised."

William B. Astor died on the 24th of November, 1875, about twenty-six years after the date of the last deed and neither of said instruments was made by him in contemplation of death. Mrs. Delano, his daughter, died June 15th, 1902, without issue, leaving a last will and testament, which has been duly admitted to
223 probate, whereby she exercised the power of appointment contained in said deeds in favor of Arthur Astor Carey, her nephew.

A proceeding was commenced before the proper surrogate to make the usual appraisal for the purpose of assessing a transfer tax upon the property transferred and appointed by the last will and testament of Mrs. Delano, and Mr. Carey was notified to appear. He appeared only for the purpose of objecting to the jurisdiction of the surrogate, from whom he procured an order requiring the executors of Mrs. Delano and the comptroller of the state to show cause why the proceeding should not be dismissed as to him for want of jurisdiction. The surrogate denied the motion, but upon appeal to the Appellate Division his order was reversed and the proceeding was dismissed as to Mr. Carey. The comptroller appealed to this court.

Article 10 of the Tax Law relates to taxable transfers, and embraces sections 220 to 242 inclusive. Section 220, as amended in 1897, imposes a tax upon the transfer of any property, real or personal, not only by will or intestate law, but also "whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates be-
224 longed absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; * * * ." (L. 1897, ch. 284, §220, subd. 5.)

The learned Appellate Division held that the statute, as amended, applied to the property in question, but that the appointee took under the deeds and not under the will, and the attempt of the act to impose a tax upon the property under the guise of a tax upon succession, was retroactive and unconstitutional.

The statute, as we read it, does not attempt to impose a tax upon property, but upon the exercise of a power of appointment. The power in this cause was exercised by will, in such a way that the appointee became entitled to all the property, instead of an aliquot part. While the property came to him by deed from his grandfather, only a part of it could have reached him but for the will of his aunt. His title to the most of it depended on the will, as well as upon the deed. He is compelled to resort to the will in order

to establish his right, for the deed alone will not suffice. The privilege of making a will is not a natural or inherent right, but one which the state can grant or withhold in its discretion. If granted, it may be upon such conditions and with such limitations as the legislature sees fit to create. The payment of a sum in gross,
225 or of an amount measured by the value of the property affected, may be exacted, or the right may be limited to one or more kinds of property and withdrawn as to all others. The legislature could provide that no power of appointment should be exercised by will, or that it should be exercised only upon the payment of a gross or ratable sum for the privilege. It could exact this condition, independent of the date or origin of the power. All this necessarily flows from the absolute control by the legislature of the right to make a will. (Matter of Sherman, 153 N. Y. 1, 4; Matter of Dows, 167 N. Y. 227, 231; Magoun *v.* Illinois Trust & Sav. Bank, 170 U. S. 283; United States *v.* Perkins, 163 U. S. 625, 628; Mager *v.* Grima, 8 How. (U. S.) 490, 493.)

We do not regard the question presented as open in this court, for we have recently passed upon it in two cases, each of which arose under the statute as amended in 1897. In the earlier case a testator, who died in 1885, created a trust fund and gave the income thereof to his son during life, but directed that upon his death the principal should be paid to his issue in such shares or proportions as he should by will appoint, with a gift directly to such issue if the power of appointment was not exercised. The son died in 1899, leaving a will by which he exercised the power. We held, adopting the opinion of the court below, that, although the ultimate right of succession to the fund was not taxable under the statute in force when the father died, still the shares of the appointees
226 under the son's will were subject to a transfer tax under the act of 1897. (Matter of Vanderbilt, 50 App. Div. 246; 163 N. Y. 597.)

In the second case the testator died in 1880, after devising certain real property in trust to pay the income to his son during life and upon his death said realty was to vest absolutely and at once in such of his children and the issue of his deceased children as he should by will appoint. If, however, the son should die intestate, the realty was to vest absolutely and at once in his children then living and the issue of his deceased children. The son exercised the power by his last will and died in 1899. We held that the property was subject to the tax imposed by the act of 1897; that such tax was on the right of succession and not on the property; that whatever may be the technical source of title of a grantee under a power of appointment, in reality and substance it is the execution of the power that gives to the grantee the property passing under it and that when the father devised the property to the appointees under the will of his son he necessarily subjected it to the charge that the state might impose on the privilege accorded to the son of making a will. (Matter of Dows, 167 N. Y. 227; affirmed, *sub nom:* Orr *v.* Gilman, 183 U. S. 278)

The Supreme Court of the United States reviewed our de-
227 cision, and after due consideration of the statute in ques-
tion, was unable to see that as construed by us it infringed any provision of the Federal Constitution.

The learned judges below did not consider the Dows case in their opinion, but they attempted to distinguish the Vanderbilt case from the one in hand upon the ground that the power of appointment was created by will and that the will was made after the enactment of the Collateral Inheritance Tax Law. The latter distinction did not exist in the Dows case, where the power was created before any act was passed in this state providing for the imposition of a succession or transfer tax.

We think neither distinction is well founded. As the tax is imposed upon the exercise of the power, it is unimportant how the power was created. The existence of the power is the important fact, for what may be done under it is not affected by its origin. If created by deed its efficiency is the same as if it had been created in the same form by will. No more and no less could be done by virtue of it in the one case than in the other. Its effective agency to produce the result intended is neither strengthened nor weakened by the nature of the instrument used by the donor of the power to create it. The power, however or whenever created, authorized the donee by her will to divest certain defeasible estates and to vest them absolutely in one person. If this authority had been conferred by will,
instead of by deed, the right to act would have been pre-
228 cisely the same and the power would have neither gained
nor lost in force. The statute applies to all powers alike, without distinction on account of the method of creation or the date of creation, and provides that the exercise of the power shall be deemed a taxable transfer of the property affected, the same as if it had belonged absolutely to the donee of the power and had been bequeathed or devised by such donee. As we said through Judge Cullen in the Dows case: "Whatever be the technical source of title of a grantee under a power of appointment, it cannot be denied that in reality and substance it is the execution of the power that gives to the grantee the property passing under it." This accords with the statutory definition of a power as applied to real estate, for it includes authority to create or revoke an estate therein. (Real Property Law, § 111.) Such was the effect of the exercise of the power under consideration, for it both revoked and created estates in the real property and interests in the personal property. No tax is laid on the power, or on the property, or on the original disposition by deed, but simply upon the exercise of the power by will, as an effective transfer for the purposes of the act. If the power had been exercised by deed, a different question would have arisen, but it was exercised by will and owing to the full and complete control by the
legislature of the making, the form and the substance of wills,
229 it can impose a charge or tax for doing anything by will.

It is quite immaterial that there was no statute imposing a succession tax of any kind in force when the orignal disposition of the property was made and the power was created. That transfer

is not taxed and the statute makes no effort to reach it. It is the practical transfer through the exercise of the power by will that is taxed and nothing else. The right of the legislature to impose a tax on the privilege of exercising a power by will is not affected by the fact that no such tax was imposed when the power was created. When the creator of the power granted the property to the appointees of his daughter, as Judge Cullen said in the Dows case, "he necessarily subjected it to the charge that the state might impose on the privilege accorded to the" daughter "of making a will. That charge is the same in character as if it had been laid on the inheritance of the estate by the" daughter herself, "that is, for the privilege of succeeding to property under a will." If the power had not been exercised, the question would have resembled that presented by the Pell case, relied upon below, where we held that a statute was unconstitutional which imposed a tax upon such remainders, already vested and non-defeasible, as should result in an absolute title after the passage of the act. (Matter of Pell, 171 N. Y. 48.) In that case the transfer was completed without the aid of a will and
230 the effect was the same as a deed *inter vivos*. There was no foundation for a succession tax, which is a charge upon the right to make a will, or on the right to inherit without a will.

We think that the surrogate had jurisdiction and that his order denying the motion to dismiss the proceedings as to the respondent was proper. It follows that the order of the Appellate Division should be reversed and that of the surrogate affirmed, with costs.

Parker, Ch. J, Bartlett, Haight and Cullen, JJ., concur; O'Brien and Werner, JJ., dissent.

Order reversed, etc.

231 [Endorsed:] In the Matter of the Transfer Tax upon the Property transferred and appointed by the Last Will and Testament of Laura Astor Delano. Opinion.

232 *Opinion of Appellate Division in Matter of Delano (82 App. Div., 147).*

Supreme Court, Appellate Division, First Department, March, 1893.

Chas. H. Van Brunt, P. J., Edward Patterson, Morgan J. O'Brien, George L. Ingraham, Edward W. Hatch, JJ.

No. 5065.

In the Matter of the Transfer Tax upon the Property transferred and Appointed by the Last Will and Testament of LAURA ASTOR DELANO, Deceased.

Appeal from Order Denying Motion to Dismiss Proceedings Brought to Tax Property Transferred and Appointed, so far as They Relate to the Appellant.

This proceeding was brought to appraise and assess for the purpose of taxation under the Act relating to taxable transfers (Chapter 908 Laws 1896 as amended by Chapter 284 Laws 1897) the property of Laura Astor Delano who died June 15th, 1902, leaving a last will and testament; and Arthur Astor Delano was notified to appear therein. His attorneys gave notice of appearance in his behalf, but only for the purpose of objecting to the jurisdiction of the Surrogate's Court, and applied to the Surrogate to dismiss the proceeding as to him and as to certain property mentioned in two deeds one dated September 30th, 1848 and the other September 6th, 1849, made by William B. Astor giving to his daughter, Laura Astor Delano, the testatrix, a power of appointment which power
233 she exercised in her will in favor of the said Arthur Astor Carey. The basis of the application was that the Surrogate had no jurisdiction over the property in question; and annexed to the affidavit of the attorneys were the two deeds mentioned.

By the first of these deeds given in 1848, twenty-six years before his death, William B. Astor (and his wife) conveyed certain real estate to Laura Astor Delano for her life, conditions being therein stated upon the happening of which her estate should cease and determine and other conditions being included disposing of the property to certain persons named upon her death. The deed then continues: "Provided however, and power is hereby granted unto the said Laura, in her discretion to give the said land and premises or any share or part thereof to and amongst her said issue, brothers, sister Alida, or their issue, (the same persons to whom it would by the deed pass were the power not exercised) in such manner and proportions as she may appoint by instrument in its nature testamentary to be acknowledged by her as a deed in the presence of two witnesses or published by her as a will." Power was also given her and the manner and conditions of its exercise stated, whereby she might lease the property or mortgage or sell it (in

the latter case the proceeds to be considered as the property itself"; and the deed contained a reservation to the grantors whereby they might, during the life of their daughter, "appoint, convey and settle the said land and premises hereby granted to her sole and separate use in equity, notwithstanding her coverture with remainders as to them or the survivor of them as may seem fit."

234 By the deed of 1849, William B. Astor in consideration of love and affection to his daughter Laura Astor Delano, granted and transferred to trustees named "Fifty thousand dollars of the Public Debt of the State of Ohio" in the form of certificates, "To receive the interest and income thereof and to apply the same as it shall be received, to the use of the said Laura during her life * * * and upon the further trust, upon her death to transfer and convey the capital of the said stock to the issue of the said Laura surviving her * * * But if she shall leave no issue surviving her then to transfer the said capital to her surviving brothers and sister Alida and to the issue of any of them who may have deceased leaving issue then surviving." Then follows the provision: "Provided however that it shall be lawful for the said Laura by any instrument executed duly as a will of personal estate, to dispose of the said capital into and amongst her issue, brothers, sister and their issue, in such shares and proportions as she may think fit and upon such limitations by way of trust or otherwise as in her discretion may be lawfully devised." A power of sale was also given her with conditions similar to those in the deed of real estate, it being provided that if the certificates were sold "the fund into whatever form it may thus be changed shall stand upon the same trusts, limitations of interest and powers as are herein expressed both as to income and capital."

After the execution of these deeds, the daughter during her lifetime received the benefits of the property so conveyed to her which remained intact; and, in the second clause of her will,—she

235 having previously disposed of other property to other persons,—she gave, devised, bequeathed and appointed to her nephew Arthur Astor Carey, the property "described in the deed * * * deed of settlement bearing date September 30th, 1848, To Have and to Hold * * * and to his heirs and assigns forever;" and also devised, bequeathed, limited and appointed to her said nephew, Arthur Astor Carey, "Fifty thousand dollars of the Public Debt of the State of Ohio or the proceeds thereof particularly mentioned and described in the * * * deed of settlement bearing date September 6th, 1849, To Have and To Hold * * * and to his heirs and assigns forever."

The application to dismiss, as to Arthur Astor Carey and the property which he thus became entitled to receive, the proceeding brought to appraise and tax the estate of Laura Astor Delano under the Act relating to Taxable Transfers, was denied and from the order so entered, he appeals.

Lucius H. Beers, for appellant.

George M. Judd, for respondent.

O'BRIEN, *J.*:

The portion of the Transfer Tax Law which it is claimed is applicable to the property appointed to the appellant, is Subdivision 5 of Section 220 incorporated in the law by amendment by Chapter 248 Laws 1897, and providing that: "Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer
236 taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will * * *.

In terms the amendment would seemingly apply to the property here in question because a studied effort has been made by the language employed in the Act to destroy any distinction between the disposition of property under a power of appointment made "before or after" the passage of the Act. The construction of language identically the same taken from Subdivision 3 of Section 1 of the Transfer Act of 1892 (Chap. 399 Laws 1892) was involved in the Seaman case (Matter of Seaman, 147 N. Y., 69) and therein it was held (head-note) that such language "is to be restricted to the case of grants or gifts *causa mortis*, mentioned in the preceding portion of the subdivision and does not extend to transfers by will or intestacy so as to subject to taxation rights of succession which accrued before the statute came into existence."

There is the same constitutional objection to giving the amendment of 1897 a retroactive effect so as to make it apply to instruments which existed and were in force before its passage as existed in the Seaman case. Similiarly in Matter of Pell (171 N. Y., 48) with reference to Chapter 76 of the Laws of 1899 which in terms imposed a transfer tax upon remainders and reversions vesting prior to 1885, it was decided that such a provision in the law was unconstitutional; and therein it was distinctly held, following the decision in Matter of Swift, (137 N. Y., 77) that the tax could not be sustained as one upon property but must be supported as a tax upon the
237 right of succession. As said in Matter of Pell (*supra*): "This court and the Supreme Court of the United States have held in numerous cases that the transfer tax is not imposed upon property, but upon the right of succession. It therefore, follows that where there was a complete vesting of a residuary estate before the enactment of the transfer tax statute, it can not be reached in that form of taxation."

Under the deeds of William B. Astor which are before us for consideration, the rights of the relator were vested and were, under well settled rules of law, created by the donor of the power and not by the donee by whom the power was exercised. In Root *v.* Stuyvesant (18 Wend. 257), it is said: "It appears to be well settled that until the execution of the power, the remainders or limitations over take effect the same as if no such power existed or as in case of default of execution of it * * * The doctrine is very clearly and succinctly stated by Fearne; and Sugden, after discussing the cases

on the point, observes that the result of the authorities is that the power of appointment does not prevent the vesting of the estates limited in default of appointment. They are, of course, subject to be divested on the execution of the power." With respect, therefore, to the interests of the relator, we must have in mind the rule that the estate of the appointee under a power is derived from the donor of the power and not from the donee. Under this familiar rule, the interests of Arthur Astor Carey became vested under the deeds made by William B. Astor in 1848 and 1849 and he would have succeeded to such vested interests had their been a de-
238 fault in the exercise of the power of appointment.

It is true that the donee in the exercise of the power of appointment had the right to determine between the individuals in the class in whose favor she was to exercise the power; but although this rendered the interests of any of the individuals in the class subject to be divested it created no distinction different from what would have existed if the property had been originally given to Laura Astor Delano for life with remainder over to persons named whose interests were to be divested in the event of their dying before the termination of the life estate. The relator could have been divested of his interests by the exercise of the power of appointment in favor of any other member of the class to whom it was limited and he may have obtained a much greater estate by reason of the fact that the power was exercised exclusively for his benefit. It follows, nevertheless, that his rights were obtained under the deeds of the donor which were made long prior to the enactment of any inheritance tax law and, therefore, it is only by regarding the transfer act as imposing a tax upon property which it was held in the Pell case (*supra*) could not in the guise of a succession tax be done, that the interests of the relator can be taxed under it.

We have not overlooked Matter of Vanderbilt (50 App. Div., 246; aff'd 163 N. Y., 597) wherein the construction of this same subdivision of the Statute was involved as bearing upon a case where a testator who died in 1885, by will gave to his son the income of a trust fund during his life and power to dispose of the principal by will to his issue. This power having been exercised on the death of the son in 1899, it was held that the disposition of the prop-
239 erty made under such appointment was taxable under the Act. That decision, however, which at first blush might seem to be controlling, is distinguishable in two features; one that the power of appointment itself was created by will, and the other that such will was made and went into effect at a time subsequent to the enactment of a collateral inheritance tax law. The power of appointment here involved was not given by law but was conferred by deed; and at the time the interest of the relator vested, there was no inheritance tax or transfer tax law in existence.

Upon reading the authorities it will be found that the cases point out specifically the fundamental distinction between the power of appointment created by deed and one created by will, as regards the right of the Legislature to impose a transfer tax. As stated, to impose a tax upon a transfer by deed is the exercise of the general tax-

ing power of the State; while a tax upon a power of appointment which has been created by will, is a succession tax depending upon a transfer brought about by death. It is not claimed for this amendment of 1897 that it was the exercise of the general taxing power of the State; and to be supported, therefore, it must be, if at all, upon the theory that it imposes a succession tax.

As said in Matter of Swift, 137 N. Y., 83, "The idea of this succession tax, as we may conveniently term it, is more or less compound; the principal idea being the subjection of property, ownership of which has ceased by reason of the death of its owner, to a diminution by the State, reserving to itself a portion of its amount, if in
240 money, or of its appraised value if in other forms of property." And in Matter of Sherman (153 N. Y., 3) it was said: "The power of a State to tax the right of transfer of property by will or the right of succession under the intestate laws of the state is not an open question. It results from the acknowledged principle that the right to dispose of property by will and of succession thereto in cases of intestacy is derived from and under the municipal law * * * It is a tax upon the right of transfer by will or under the intestate law of the state."

It is not, however, within the power of the Legislature merely by calling a tax one upon the right of succession to impose what in substance and effect is a tax upon property. In terms, unquestionably, the Legislature has called the estate which the relator has received, a succession and upon the right to such succession has attempted to impose a tax; but it cannot change the legal nature or character of the property interest by applying to it a name, nor can it impose a tax upon property which the relator has received under the deeds of William B. Astor given in 1848 and 1849 by subsequently enacting that to such property the relator has succeeded under the will of Laura Astor Delano and that as to it a tax is due as a tax upon the right of succession as though it was the property bequeathed or devised by her.

Having in mind, therefore, the fact that the relator obtained his property rights by deed and not by will and at a time when there was no transfer tax or inheritance tax law in existence and that he does not obtain his estate by right of succession under the will
241 of Laura Astor Delano but acquires it under the deeds of William B. Astor which were in no sense testamentary in character but were made many years before the grantor's death, it follows, we think, that the attempt of the Legislature to tax such property rights, can not succeed and for the reasons that we have briefly outlined, namely, that to uphold the tax here sought to be imposed under the guise of taxing a right of succession, would in fact be to sanction a tax upon property and for that purpose to give to the amendment of 1897 a retroactive effect which would be violative of the Constitution.

The conclusion renders it unnecessary for us to discuss or determine the question which has been urged by the appellant with much force that in the present instance the Surrogate's Court had no jurisdiction to entertain the proceeding for the purpose of levying the tax.

We think that the order of the Surrogate should be reversed with costs and the proceeding dismissed as to the appellant.

All concur.

This certifies that the foregoing is a true copy of the opinion now on file in our office, rendered April 17, 1903, on the decision of the above entitled appeal; that we have compared it with the original, and that it is a correct transcript therefrom, and of the whole of the original.

Dated, New York, Jan. 31, 1906.

STOREY & DOANE,
Stenographers, Supreme Court,
Appellate Division, First Department.

242 [Endorsed:] 5065. Supreme Court, Appellate Division, First Department. Matter of Delano. Opinion.

243 [Endorsed:] United States Supreme Court, in Error to the Surrogates' Court of New York County. Winthrop Astor Chanler, and Others, Plaintiffs in Error, against Otto Kelsey, Comptroller of the State of New York, Defendant in Error. Stipulation and Opinions.

Endorsed on cover: File No. 20,152. New York county Surrogate's court. Term No. 240. Winthrop Astor Chanler, Thomas T. Sherman, as Committee for John Armstrong Chanler *et al.*, plaintiffs in error, *vs.* Otto Kelsey, comptroller of the State of New York. Filed March 28th, 1906. File No. 20,152.